
DISABILITY RIGHTS AND APPEALS PROCESS GUIDE

Revised June 2007



THE PROTECTION AND ADVOCACY SYSTEM FOR INDIANA
MEMBER: NATIONAL DISABILITY RIGHTS NETWORK

The information and procedures set forth in this manual are subject to constant change and therefore should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein. Further, the forms contained within this manual are samples only.

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While this publication is intended to provide basic information, it is not legal advice. While attempts were made to ensure its accuracy, readers should direct their questions concerning their specific situations to the legal aid society or private attorney of their choice.

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An Introduction to Disability Rights and the Appeals Process

Today, there are more than 54 million Americans living with disabilities.

For these people and their families, every day presents a new challenge. Communicating with others, getting from place to place, working and even recreation can be made difficult, or sometimes impossible.

People with disabilities have rights under the law. The United States Congress recognizes disabilities as a natural part of the human experience, and to help ensure that no one is excluded from mainstream society, Congress has enacted laws providing support services and programs for people with disabilities.

People with cognitive, mental, sensory and physical disabilities are protected against discrimination, abuse and neglect. Like all other Americans, they have the right to live their lives as fully and independently as possible, and with the freedom to make their own decisions to the extent of their abilities.

Too often, individuals with disabilities are:

- Abused or neglected by caregivers
- Denied appropriate medical, habilitation, or psychiatric treatment
- Denied free and appropriate public educational services
- Denied physical access to public places and governmental services
- Discriminated against when trying to obtain employment or housing
- Denied the ability to make their own decisions and be a fully participating member of their community
- Denied the assistive technology services or devices they need to be more independent
- Denied privacy by having private information released to others without their consent
- Denied the right to make their own choices as they prepare for employment

Rights are meaningless unless they are respected by others. Individuals may take steps to have them enforced through appropriate advocacy and through the appeals process.

An Introduction to Advocacy

Preparation is a very important factor in learning to advocate for oneself or someone else. It is very important to be prepared and have an appropriate plan of action. In order to accomplish this endeavor you will need to develop advocacy strategies. Below are a number of advocacy strategies you can use.

- Research information on your disability or the disability of the person that you may advocate for or represent. It is very important to learn as much as possible about the disabling condition(s).
- Learn civil rights and all other laws that may pertain to issues regarding the disability. Some of the pertinent laws are the Americans with Disabilities Act, Rehabilitation Act, Developmental Disabilities Act, Protection and Advocacy of Individuals with Mental Illness Act, etc., and all amendments to the acts.
- Research other resources that can benefit you or people that you may represent, such as agencies that promote independence and provide support.
- Create or have someone create for you a journal that documents any and all contacts made regarding an issue or problem.
- Always document or have someone document for you pertinent information such as who you talked to, when you talked to them and what you talked about.
- Always prepare before going to a meeting. Write down the issues that you want to discuss and any laws that support your position and pertain to those issues. Ask questions and make sure clarifications are made so that you understand what is being said at all times. If needed, take other representatives who support your position and can help resolve your issues to the meeting.
- When attending a meeting, try to record the meeting if at all possible or request that minutes of the meeting be taken. Ask for a copy of the minutes as soon as the meeting concludes.
- It is important to stay focused on your issues at all times during the meeting and to maintain assertiveness in seeking resolutions for the problem you face.
- Stay encouraged. Meet and talk with others who may share the same concerns or struggles that you may be experiencing.

(Source: Marianne Finely, Advocacy Program Coordinator, Tennessee Protection and Advocacy, Inc.)

World's Shortest Advocacy Course

- **Solve problems at the simplest level.** Don't wait for small issues to mount up and become a large crisis.
- **Be straightforward and assertive.** Keep a positive approach. There are many ways to "skin a cat." Look for solutions in which everybody wins. This will take creativity and an open mind.
- **Communicate.** Don't be afraid to say what you think. Never forget to listen to what others are saying. Sometimes writing can be more effective than talking.
- **Do something.** Even if it turns out to be ineffective, it will lead you to another, better approach. Putting off action in order to create the perfect solution can let problems become much more difficult to resolve. Procrastination leads to anxiety and drains energy.
- **Rights are like muscles. If you don't exercise them, they atrophy.** Just because there is a law describing a right, it does not always hold true that others will automatically respect that right. Often we must claim the right, insisting that it be respected. Otherwise, our right may be ignored, even by the very systems intended to serve us.
- **Claiming a right might require us to use due process.** Due process is an organized way of making an appeal or complaint.
- **Any program receiving public funding has due process procedures.** However, such appeal procedures vary from system to system (e.g., timeliness). Just remember that all systems have methods for appeal and people who work in each system can/should explain these processes.
- **We can make processes work only if we use them.**
- **Litigation is time consuming and costly in terms of money, energy and emotion.** It is the "ultimate weapon," but sometimes nothing else will do.

PATIENCE:

- Focus on present possibilities, not past failures
- Listen to all sides but keep your own perspective
- All journeys begin with a single step; just keep walking and you'll get there
- Look around and be aware of how much progress you have made

PREPARATION:

- Do your homework
- Understand the facts
- Document
- Take training when it is available
- Gather with others who have the same concerns

PERSISTENCE:

- Don't take "no" for an answer
- Keep asking
- Follow through
- Use due process if cooperation and negotiation don't resolve an issue

Due Process in a Nutshell

1. All publicly funded programs have due process rights attached. If there is public money involved in a program, then applicants and participants have the right to appeal if they do not agree with the program decisions. To be effective in accessing due process, one must follow the due process rules set out in each system (e.g., special education, Social Security, vocational rehabilitation, etc).
 2. Due process rules for each system are unique. In comparing systems, we can see that they vary in the following ways:
 - A. Timelines (How long one has to initiate an appeal or due process – as well as timelines for steps within the appeal)
 - B. How and when evidence may be introduced

Example: Multiple copies of evidence may be required for hearing officers and other parties involved in the hearing. Any evidence and/or witnesses to be presented at a special education hearing must be disclosed five days prior to the hearing date to both the hearing officers and to the opposing side.

Example: In some systems, new items of evidence may not be introduced beyond the initial hearing level. This means that no new evidence may be introduced at appeal levels. Although some systems allow new evidence to be introduced even in the later stages of the appeal process, this approach is not typical. It is more common that appeals are reviews of the evidence presented at the hearing level, and no further new evidence can be introduced.
 - C. If an individual is representing himself, or has legal counsel, this will sometimes create differences from system to system.
 - D. Some due process practices are much more informal than others. However, this does not mean that there are no rules in systems that are less formal. There are written rules for due process in each system and they must be observed.

Example: Hearings are less formal than a court proceeding, but in each case there is a prescribed method for how the proceeding is conducted; whether or not an opening or closing statement is permitted; how witnesses and evidence are introduced; and whether or not the whole proceeding can be opened for the public to attend.
 - E. Applicants and recipients of services should be given a written copy of their due process rights when they first enter each system. If you aren't given one – ask for it.
- NOTE: These examples are not the only differences among due process systems. Rather, this sampling is intended to give you some idea of the types of variations that exist. The important thing is to be aware that due process does vary from system to system and you must follow those rules and timelines for the particular system you are using.*
3. The party requesting a hearing or appeal generally has the right to review all records related to his/her own case. This is a good idea to do, because it allows you to see all documentation that the opposing side might present to support their position.

4. Be prepared for some hard work and some waiting. Due process requires observance of certain timelines and careful preparation of the evidence that is being presented. There are no “quick fixes” or “overnight remedies.”
5. Administrative due processes (e.g., hearings before hearing officers) must be exhausted before an appeal on the issue can be filed as a court case. This means that when administrative hearings are available to consider appeals, they must be used in an effort to resolve the problem. One cannot go to court until administrative hearings have been tried and still failed to produce a satisfactory outcome.
6. Due process procedures are meant to provide an objective consideration of the facts by an unbiased hearing officer or administrative law judge. The unbiased hearing officer then produces a decision that is based on evidence or applicable law or regulation. This means that different viewpoints held by the parties will be explored and considered. It does not guarantee that the person making the appeal will get what he/she wants, only that he/she will be given an opportunity to present his/her facts and viewpoints for an objective view.

Definitions of Terms Commonly Used in Due Process

Hearsay

Oral or written evidence that is secondhand information where the witness does not have personal knowledge, but is repeating what other individuals had reportedly told them.

Evidence

Documents, material objects and testimony that are submitted to support a position or fact as well as to disprove a position or fact.

Ex-parte Communication

Communication with the hearing officer or administrative law judge either by or for one side only, without notice to or participation by the other side (Note: Hearing officers or administrative law judges typically do not allow this to occur).

Motion

A request to the hearing officer to issue an order directing a course of action.

Petitioner (Appellant)

The individual or agency requesting the hearing.

Respondent (Appellee)

The individual or agency answering the request for a hearing.

Pre-hearing Conference

A meeting held, either in person or by telephone, including the hearing officer and representatives of both the petitioner and the respondent used to clarify issues of the hearing and to handle any pre-hearing requests.

Sequester or Separation of Witnesses

An order forbidding witnesses from discussing the issues of the hearing with other witnesses, usually requires witnesses not testifying to be removed from the hearing room.

Stipulation

An agreement by the parties to a fact, evidence, relevant issue, etc.

How a Bill Becomes a Law in Indiana

A bill's journey to passage in the Indiana General Assembly is usually not as simple and straightforward as many of us learned in high school or college political science courses. There are many roadblocks and pitfalls that a bill will encounter after its introduction. In addition, most bills will encounter some level of opposition from some group or individual at some point in the process, no matter how innocuous the subject matter may seem.

What follows is a very thumbnail outline of the path most bills take to passage, or defeat, in a typical Indiana Legislative Session. Again, there are many other pitfalls that a bill can meet on its way through the process. Political disagreements, even between legislators in the same political parties, lead to the death of many bills each session. Many bills also inevitably die during the rush to get bills through the process at the time of the deadline for moving bills from each house. Nevertheless, the following provides a good overview of the legislative process.

How Bills Pass

First Reading – Each bill presented by a legislator is first read by title in the house of its origin. At this point, either the speaker of the House or the president *pro tempore* of the Senate refers the bill to a committee.

Committee Action – The committee's responsibility is to consider the merits of a bill and determine whether it can be improved by amending the language or by making additions or deletions. It is required that committee schedules be posted on House and Senate bulletin boards. Whenever possible, committee hearings are open to the public so that interested parties may speak on the measures being heard. The committee's final action is to report the bill back to the legislative body with the committee report. If the committee report is adopted, the bill is printed and ready for further action.

Second Reading – When the bill is brought up for second reading on the House or Senate floor, legislators have an opportunity to propose amendments. In order to be accepted, any amendment must win the approval of a majority of the legislators present and voting. After the second reading, the bill is "ordered to engrossment." This means that with its amendments the printed bill is authenticated as being accurate and genuine.

Third Reading – The engrossed bill is again called up to be read after which legislators have an opportunity for debate on its merits before the final vote is taken. It must receive a constitutional majority, meaning 51 "aye" votes in the House or 26 "aye" votes in the Senate before it can be adopted. Those bills approved are sent to the other chamber where the entire process will be repeated.

Conference Committee – If the bill passed by one chamber is then amended by the other, the first chamber must agree upon the amendment(s) before the legislative process can be completed. Should the first chamber dissent (refuse to agree to the changes) a conference committee of two members from each house is appointed to work out a version of the bill that will be satisfactory to both houses. All four must sign the conference committee report and it must be favorably voted on in both houses. Once this has been accomplished, the bill goes to the governor for signature.

Governor's Action – The governor sends every bill received to the attorney general for examination to see if its content is legally acceptable. The last step in the enactment process is for the governor to sign the bill, or to let it become law without signature. Bills become effective on July 1 of the year they are enacted unless a different effective date is specified on the bill.

How Bills Fail

First Reading – Either house has the authority to vote not to receive a bill on its introduction (first reading). Also, a motion for indefinite postponement or to table the bill may be made from the floor at any time throughout these steps. If approved, either of these motions has the effect of preventing any further progress.

Committee Action – The committee to which a bill is referred can kill it simply by refraining from acting on it. This is a common defense tactic if the committee chairman agrees not to schedule the bill for a hearing.

Second Reading – A motion for indefinite postponement or to table sometimes is made from the floor at this point in the process. Attempts also may be made to amend the bill in such a way that it will stand less of a chance of passage. A motion may also be made at this point to strike out the enacting clause, which effectively kills the effect of the bill.

Third Reading – A bill can win approval of more than half of the legislators voting on it and still falter at this point through failure to gain a constitutional majority (51 “aye” votes in the House and 26 “aye” votes in the Senate). A bill that has simply failed to win a constitutional majority can be called up again for another vote. If it has been defeated by a constitutional majority, however, it cannot be considered again except by suspension of the rules.

A bill that reaches the second House is subject to all of the opportunities to succeed or fail that exist in the House of introduction.

Conference Committee – A bill that survives the hazards of both houses but is amended in the second chamber in a manner that is unacceptable to the House of origin must go to a conference committee consisting of two members appointed from each House. The committee members attempt to reach an agreement that will be acceptable to legislators in both chambers. All four members of the committee must sign the conference committee report and it must be approved in both houses. Bills sometimes die because no such agreement can be reached.

Governor's Action – The final obstacle to a bill passed by both houses is a veto by the governor. The veto can be overridden, but it requires a constitutional majority of both houses to do so. The governor has seven days in which to act on a bill that has been passed by both houses. If the governor neither signs nor vetoes the bill within that period, it becomes law without signature on the eighth day. A bill vetoed at the end of a session is brought before the legislators in the next succeeding session, usually in the beginning days, for their decision on whether to override the governor's veto.

Hopefully, this has been a useful explanation for those individuals seeking to learn more about the political process in Indiana. One thing to keep in mind about the Indiana General Assembly – making laws is like making sausage, you really do not want to know how it is done – you just want a quality final product.

Americans with Disabilities Act (ADA)

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation and telecommunications. It also applies to the United States Congress.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

ADA Title I: Employment

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For example, it prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities and other privileges of employment.

It restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship. Religious entities with 15 or more employees are covered under Title I.

Title I complaints must be filed with the U. S. Equal Employment Opportunity Commission (EEOC) within 180 days of the date of discrimination, or 300 days if the charge is filed with a designated state or local fair employment practice agency. Individuals may file a lawsuit in federal court only after they receive a "right-to-sue" letter from the EEOC.

Charges of employment discrimination on the basis of disability may be filed at any U.S. Equal Employment Opportunity Commission field office. Field offices are located in 50 cities throughout the U.S. and are listed in most telephone directories under "U.S. Government."

For the appropriate EEOC field office in your geographic area, contact:

(800) 669-4000 (Voice)

(800) 669-6820 (TTY)

www.eeoc.gov

Publications and information on EEOC-enforced laws may be obtained by calling:

(800) 669-3362 (Voice)

(800) 800-3302 (TTY)

For information on how to accommodate a specific individual with a disability, contact the Job Accommodation Network at:

(800) 526-7234 (Voice/TTY)

www.jan.wvu.edu

How to File a Title I ADA Administrative Complaint

Title I - Employment Enforcement Procedures and Limitations

A. Internal Grievance Procedure This is not required, but may be provided by employer.

B. Filing an Administrative Complaint

1. File a complaint (also called a charge of discrimination) with EEOC.
(800) 669-4000 voice.
 - (a) Complaint must be filed within 180 days of incident of discrimination. In some states, charges may be filed up to 300 days after the incident, but in any case, contact EEOC promptly.
2. EEOC will investigate charge to determine whether there is probable cause to believe discrimination has occurred, and if there is, to conciliate the dispute. A “right to sue” letter will be issued to charging party (person who files the complaint), if the dispute is not resolved by EEOC. Alternatively, the EEOC could decide to file its own lawsuit. Right to sue letters may be requested after 180 days.

C. Filing a Lawsuit

1. Only possible after EEOC has issued “right to sue” letter.
2. Remedies available (based on Civil Rights Act of 1991):
 - (a) Injunctive and equitable relief, including hiring, reinstatement in a job, promotion. back pay, front pay, restored benefits, reasonable accommodation, attorney’s fees, expert witness fees and court costs.
 - (b) Compensatory damages and jury trials available for intentional discrimination.
 - (c) Punitive damages available for wanton, willful or reckless intentional discrimination.
 - (d) Cap on sum of future compensatory, “pain and suffering” and punitive damages depends on number of employees:
 - (i) 15 - 100 employees: \$ 50,000 cap
 - (ii) 101 - 200 employees: \$100,000 cap
 - (iii) 201 - 500 employees: \$200,000 cap
 - (iv) 500+ employees: \$300,000 cap

D. Alternative Dispute Resolution (voluntary). Any individual with a disability who pursues Alternative Dispute Resolution should consider filing an administrative complaint first, due to 180-day time limit on filing a complaint.

The U.S. Equal Employment Opportunity Commission

Filing a Charge of Employment Discrimination

Note: Federal employees or applicants for Federal employment should visit www.eeoc.gov for the Federal Sector Equal Employment Opportunity Complaint Processing.

Who can file a charge of discrimination?

Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with EEOC.

In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity.

How is a charge of discrimination filed?

A charge may be filed by mail or in person at the nearest EEOC office.

Individuals who need an accommodation in order to file a charge (e.g., sign language interpreter, print materials in an accessible format) should inform the EEOC field office so appropriate arrangements can be made.

Federal employees or applicants for employment should visit www.eeoc.gov for the Federal Sector Equal Employment Opportunity Complaint Processing.

What information must be provided to file a charge?

The complaining party's name, address and telephone number;

The name, address and telephone number of the respondent employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known;

A short description of the alleged violation (the event that caused the complaining party to believe that his or her rights were violated); and

The date(s) of the alleged violation(s).

Federal employees or applicants for employment should visit www.eeoc.gov for the Federal Sector Equal Employment Opportunity Complaint Processing.

What are the time limits for filing a charge of discrimination?

All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed:

A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights.

This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law. For ADA charges, only state laws extend the filing limit to 300 days.

These time limits do not apply to claims under the Equal Pay Act, because under that Act people do not have to first file a charge with EEOC in order to have the right to go to court. However, since many EPA claims also raise Title VII sex discrimination issues, it may be advisable to file charges under both laws within the time limits indicated.

To protect legal rights, it is always best to contact EEOC promptly when discrimination is suspected.

Federal employees or applicants for employment should visit www.eeoc.gov for the Federal Sector Equal Employment Opportunity Complaint Processing.

What agency handles a charge that is also covered by state or local law?

Many states and localities have anti-discrimination laws and agencies responsible for enforcing those laws. EEOC refers to these agencies as “Fair Employment Practices Agencies (FEPAs).” Through the use of “work sharing agreements,” EEOC and the FEPAs avoid duplication of effort while at the same time ensuring that a charging party’s rights are protected under both federal and state law.

If a charge is filed with a FEPA and is also covered by federal law, the FEPA “dual files” the charge with EEOC to protect federal rights, too. The charge usually will be retained by the FEPA for handling.

If a charge is filed with EEOC and also is covered by state or local law, EEOC “dual files” the charge with the state or local FEPA, but ordinarily retains the charge for handling.

How is a charge filed for discrimination outside the United States?

U.S.-based companies that employ U.S. citizens outside the United States or its territories are covered under EEO laws, with certain exceptions. An individual alleging an EEO violation outside the U.S. should file a charge with the district office closest to his or her employer’s headquarters. However, if you are unsure where to file, you may file a charge with any EEOC office.

For answers to common questions about how EEO laws apply to multinational employers, please visit www.eeoc.gov.

ADA Title II: State and Local Government Activities

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of federal funding. Title II requires that state and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities (e.g., public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program or activity being provided.

Complaints of Title II violations may be filed with the Department of Justice within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department may bring a lawsuit where it has investigated a matter and has been unable to resolve violations.

For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530
(800) 514-0301 (Voice)
(800) 514-0383 (TTY)
www.ada.gov

Title II may also be enforced through private lawsuits in federal court. It is not necessary to file a complaint with the Department of Justice (DOJ) or any other federal agency, or to receive a "right-to-sue" letter, before going to court.

U.S. Department of Justice
Civil Rights Division

Disability Rights Section

OMB No. 1190-0009 Exp. Date 04/30/2007

Title II of the Americans with Disabilities Act

Section 504 of the Rehabilitation Act of 1973

Discrimination Complaint Form

Instructions: Please fill out this form completely, in black ink or type. Sign and return to the address on page 3.

Complainant _____

Address _____

City, State and Zip Code _____

Home Phone _____ Business Phone _____

Person Discriminated Against (if other than the complainant) _____

Address _____

City, State, and Zip Code _____

Home Phone _____ Business Phone _____

Government, or organization, or institution that you believe has discriminated

Name _____

Address _____

County _____

City _____

State and Zip Code _____

Telephone Number _____

When did the discrimination occur? Date _____

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on next page if necessary):

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization or institution? ☐ Yes ☐ No

If yes: what is the status of the grievance? _____

Has the complaint been filed with another bureau of the Department of Justice or any other federal, state or local civil rights agency or court? ☐ Yes ☐ No

If yes:

Agency or Court _____

Contact Person _____

Address _____

City, State, and Zip Code _____

Telephone Number _____

Date Filed _____

Do you intend to file with another agency or court? ☐ Yes ☐ No

Agency or Court _____

Address _____

City, State and Zip Code _____

Telephone Number _____

Additional space for answers:

Signature _____

Date _____

Return to: U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights - NYAV
Washington, D.C. 20530

ADA Title II: Public Transportation

The transportation provisions of title II cover public transportation services, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak). Public transportation authorities may not discriminate against people with disabilities in the provision of their services.

They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations.

Questions and complaints about public transportation should be directed to:

Office of Civil Rights
Federal Transit Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Room 9102
Washington, D.C. 20590
(888) 446-4511 (Voice/relay)
www.fta.dot.gov/ada

ADA Title III: Public Accommodations

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities.

Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers and recreation facilities, including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by title III.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices and procedures; effective communication with people with hearing, vision or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Commercial facilities, such as factories and warehouses, must comply with the ADA's architectural standards for new construction and alterations.

Complaints of Title III violations may be filed with the Department of Justice. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of title III, or where an act of discrimination raises an issue of general public importance. Title III may also be enforced through private lawsuits. It is not necessary to file a complaint with the Department of Justice (or any federal agency), or to receive a "right-to-sue" letter, before going to court.

For more information or to file a complaint, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530
(800) 514-0301 (Voice)
(800) 514-0383 (TTY)
www.ada.gov

**U.S. Department of Justice
Civil Rights Division
Disability Rights Section**

How to File a Title III Complaint

This is in response to your request for information on how to file a complaint under Title III of the Americans with Disabilities Act.

Title III prohibits discrimination based on disability in public accommodations. Private entities covered by Title III include places of lodging, establishments serving food and drink, places of exhibition or entertainment, places of public gathering, sales or rental establishments, service establishments, stations used for specified public transportation, places of public display or collection, places of recreation, places of education, social service center establishments, and places of exercise or recreation. Title III also covers commercial facilities (such as warehouses, factories and office buildings), private transportation services, and licensing and testing practices.

If you feel you or another person have been discriminated against by an entity covered by Title III, send a letter to the Department of Justice, at the address below, including the following information:

- Your full name, address and telephone number, and the name of the party discriminated against;
- The name of the business, organization or institution that you believe has discriminated;
- A description of the act or acts of discrimination, the date or dates of the discriminatory acts, and the name or names of the individuals who you believe discriminated; and
- Other information that you believe necessary to support your complaint. Please send copies of relevant documents. Do not send original documents. (Retain them.)

Sign and send the letter to the address below:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights - NYAVE
Washington, D.C. 20530

The Disability Rights Section will consider your complaint and inform you of its action. The office will investigate the complaint and determine whether to begin litigation. A determination will not necessarily be made on each complaint about whether or not there is an ADA violation. If it is believed that there is a pattern or practice of discrimination or the complaint raises an issue of general public importance, the office may attempt to negotiate a settlement of the matter or may bring an action in U.S. District Court. Any such action would be taken on behalf of the United States. The Disability Rights Section does not act as attorneys for, or representative of, the complainant.

You also have the option of filing your own case in U.S. District Court.

Depending on the nature of your complaint, other information would also be helpful to our investigation:

1. Small businesses have limited protection from lawsuits. Except with respect to new construction and alterations, no lawsuit can be filed concerning acts or omissions that occur before:

- 1) July 26, 1992, by businesses with 25 or fewer employees and gross receipts of \$1,000,000 or less.
- 2) January 26, 1993, by businesses with 10 or fewer employees and gross receipts of \$500,000 or less.

2. The name or names of the individuals or entities who have an ownership and/or managerial interest in each facility or business that is the subject of your complaint, with phone numbers and addresses, including zip codes, if you have them.

3. Information specifying whether the facility is owned and/or operated by a private entity or a state or local government.

4. The nature of the activity or service provided by the business.

5. If you are alleging failure to remove architectural barriers, a description, including as much detail as possible, of the barriers. If possible, please provide pictures, videotapes, diagrams, or other illustrations that accurately set forth the alleged violation.

6. Any suggestions for remedying the alleged violations of the ADA.

7. Information about whether you have filed a related complaint with a U.S. Attorneys Office, or any other Federal, State, or local agency, or any court, or whether you intend to file such a complaint.

Privacy Act Statement

The authority for collecting this information is contained in 42 U.S.C. 12188(b). We need this information in order to investigate your complaint. The personal information will be used primarily for authorized civil rights compliance and enforcement activities conducted by the Department of Justice.

The Department will not disclose the name of, or other identifying information about, an individual unless it is necessary for enforcement activities against an entity alleged to have violated federal law, or unless such information is required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, or as is allowed through the publication of a routine use in accordance with the Privacy Act of 1974, 5 U.S.C. 552a.

To further the Department's enforcement activities, information we have about you may be given to appropriate Federal, State, or local agencies. Additional disclosures of information may be made: to Members of Congress or staff; to volunteer student workers within the Department of Justice so that they may perform their duties; to the news media when release is made consistent with the Freedom of Information Act and 28 C.F.R. 40.2; and to the National Archives and Records Administration and General Services Administration to perform records management inspection functions in accordance with their statutory responsibilities.

Furnishing of the requested information is voluntary except that the failure to provide such information may result in our being unable to process your complaint.

ADA Title IV: Telecommunications Relay Services

Title IV addresses telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week.

TRS enables callers with hearing and speech disabilities who use telecommunications devices for the deaf (TDDs), which are also known as teletypewriters (TTYs), and callers who use voice telephones to communicate with each other through a third party communications assistant.

The Federal Communications Commission (FCC) has set minimum standards for TRS services. Title IV also requires closed captioning of federally funded public service announcements.

For more information about TRS, contact the FCC at:

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(888) 225-5322 (Voice)
(888) 835-5322 (TTY)
www.fcc.gov/cgb/dro

ADA Information Services

This list contains the telephone numbers and Internet addresses of federal agencies and other organizations that provide information about the Americans with Disabilities Act (ADA) and informal guidance in understanding and complying with different provisions of the ADA.

Department of Justice	Offers technical assistance on the ADA Standards for Accessible Design and other ADA provisions applying to businesses, non-profit service agencies, and state and local government programs; also provides information on how to file ADA complaints.	
	ADA Information Line	(800) 514-0301 (Voice) (800) 800-514-0383 (TTY) Web site: www.ada.gov
Equal Employment Opportunity Commission	Offers technical assistance on the ADA provisions applying to employment; also provides information on how to file ADA complaints.	
	Employment – questions	(800) 669-4000 (Voice) (800) 669-6820 (TTY)
	Employment – publications	(800) 669-3362 (Voice) (800) 800-3302 (TTY) Web site: www.eeoc.gov
Department of Transportation, Federal Transit Administration	Offers information on the public transit provisions of the ADA.	
	ADA Assistance Line	(888) 446-4511 (Voice) TTY: use relay service Web site: www.fta.dot.gov/civilrights/civil_rights_2360.html E-mail: FTA.ADAassistance@dot.gov
Federal Communications Commission	Offers technical assistance on the ADA's telephone relay service (TRS) requirements.	
	TRS publications and questions	(888) 225-5322 (Voice) (888) 835-5322 (TTY) Web site: www.fcc.gov/cgb/dro
Department of Education	Funds 10 regional centers to provide technical assistance on the ADA.	
	ADA & IT Technical Assistance Centers	(800) 949-4232 (Voice/TTY) Web site: www.adata.org

Access Board (or Architectural and Transportation Barriers Compliance Board)	Offers technical assistance on the ADA Accessibility Guidelines.	
	Publications and questions	(800) 872-2253 (Voice) Email: ta@access-board.gov
Job Accommodation Network (JAN)	Is funded by the Department of Labor to provide advice on accommodating employees with disabilities.	
	Job Accommodation Network	(800) 526-7234 (Voice) (877) 781-9403 (TTY) Web site: www.jan.wvu.edu
Project ACTION	Is funded by the Department of Transportation to provide information about making transportation accessible.	
	Transportation information and publications	800-659-6428 (Voice) TTY: use relay service Web site: projectaction.easters.com
Internal Revenue Service	Offers tax incentives to help cover the cost of complying with the ADA. Form 8826 provides a tax credit for small businesses. Publication 535 explains tax deductible expenses for business of any size.	
	Tax forms and publications	(800) 829-3676 (Voice) (800) 829-4059 (TTY) Web site: www.irs.gov/
General Sources of Disability Rights Information	ADA Information Line	Regional ADA and IT Technical Assistance Centers
	(800) 514-0301 (Voice) (800) 514-0383 (TTY) www.ada.gov	(800) 949-4232 (Voice/TTY) www.adata.org

Telecommunications Act

Section 255 and Section 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by people with disabilities, if readily achievable.

These amendments ensure that people with disabilities will have access to a broad range of products and services such as telephones, cell phones, pagers, call-waiting and operator services that were often inaccessible to many users with disabilities.

For more information or to file a complaint, contact:

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(888) 225-5322 (Voice)
(888) 835-5322 (TTY)
www.fcc.gov/cgb/dro

Fair Housing Act

The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status and national origin. Its coverage includes private housing, housing that receives Federal financial assistance and state and local government housing.

It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, for example, financing, zoning practices, new construction design and advertising.

The Fair Housing Act requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities. For example, a landlord with a “no pets” policy must grant an exception to this rule and allow an individual who is blind to keep a guide dog in the residence.

The Fair Housing Act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces (the landlord is not required to pay for the changes). The Act further requires that new multifamily housing with four or more units be designed and built to allow access for people with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver and other adaptable features within the units.

Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development.

For more information or to file a complaint, contact:

Office of Program Compliance and Disability Rights
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W. , Room 5204
Washington, D.C. 20410-2000
(800) 669-9777 (Voice)
(800) 927-9275 (TTY)
www.hud.gov/offices/fheo

Fair Housing Accessibility Questions:

(888) 341-7781 (Voice/TTY)
www.fairhousingfirst.org

You can write a letter with:

- Your name and address
- The name and address of the person your complaint is about

- The address of the house or apartment you were trying to rent or buy
- The date when this incident occurred
- Then mail to the Indiana Fair Housing HUB

For Indiana, mail complaint form to

Chicago Regional Office of FHEO
U.S. Dept. of Housing and Urban Development
Ralph H Metcalfe Federal Building
77 W. Jackson Blvd. Rm. 2101
Chicago, IL 60604-3507

Online complaint form

www.hud.gov/coplaits/housediscrim.cfm.

Complaint must be filed within one year of alleged violation.

For questions about the accessibility provisions of the Fair Housing Act, contact Fair Housing FIRST at:

(888) 341-7781 (Voice/TTY)

www.fairhousingfirst.org

For publications, you may call the Housing and Urban Development Customer Service Center at:

(800) 767-7468 (Voice/relay)

Additionally, the Department of Justice can file cases involving a pattern or practice of discrimination. The Fair Housing Act may also be enforced through private lawsuits.

Indiana Fair Housing Act

Substantially equivalent to the Federal Fair Housing Act, the Indiana Fair Housing Act gives citizens of Indiana the right to be treated equally when renting or buying property and when securing a loan to purchase property. Housing discrimination is prohibited on the basis of:

- Race or color
- National origin
- Religion
- Sex
- Disability
- Familial status*

**Familial status prohibits discrimination against women who are pregnant and families in which one or more children under 18 live with:*

- A parent
- A person who has legal custody of the child(ren)
- The designee of the parent or legal custodian, with the parent or custodian's written permission
- Anyone securing legal custody of a child under 18

Filing a Fair Housing Complaint:

The Indiana Civil Rights Commission (ICRC)
Indiana Government Center North
100 North Senate Ave.
Room N103
Indianapolis, IN 46204
(317) 232-26600 or (800) 628-2909 (Voice)
(800) 743-3333 (TTY)
(317) 232-6580 (Fax)
E-Mail: icrc@crc.in.gov

Complaint must be filed within one year after the discriminatory act occurred.

File complaint online at: www.in.gov/icrc/pubs/onlinecomplaint.html.

If needed the ICRC staff will assist in drafting and filing the complaint.

Air Carrier Access Act

The Air Carrier Access Act prohibits discrimination in air transportation by domestic and foreign air carriers against qualified individuals with physical or mental impairments. It applies only to air carriers that provide regularly scheduled services for hire to the public.

Requirements address a wide range of issues including boarding assistance and certain accessibility features in newly built aircraft and new or altered airport facilities. People may enforce rights under the Air Carrier Access Act by filing a complaint with the U.S. Department of Transportation or by bringing a lawsuit in Federal court.

For more information or to file a complaint, contact:

Aviation Consumer Protection Division
U.S. Department of Transportation
400 Seventh Street, S.W.
Attn: C-75-D
Washington, D.C. 20590

Complaint form available on website: www.airconsumer.ost.dot.gov

(202) 366-2220 (voice)
(202) 366-0511 (TTY)
(800) 778-4838 (Voice)
(800) 455-9880 (TTY)

Accessibility Laws Applying to Congress:

Office of Compliance
(202) 724-9250 (Voice)
(202) 426-1912 (TTY)
www.compliance.gov

Travelers can call these numbers for disability-related issues that are time sensitive and need to be addressed in “real time.”

Complaints Alleging Discriminatory Treatment Against Disabled Travelers Under The Air Carrier Access Act and 14 CFR Part 382

The Air Carrier Access Act (ACAA, 49 U.S.C. 41705) prohibits discrimination by U.S. and foreign air carriers on the basis of physical or mental disability. The Department of Transportation, in interpreting and implementing the ACAA, issued a rule (14 CFR Part 382) in 1990 setting forth the standards of service which U.S. air carriers are expected to provide disabled individuals. That rule will be amended to cover foreign air carriers, which became subject to the ACAA on April 5, 2000.

DOT operates a toll-free hotline to assist air travelers with disabilities. The hotline provides general information to consumers about the rights of air travelers with disabilities and responds to requests for printed consumer information. It also assists air travelers with time-sensitive disability-related issues that need to be addressed in “real time.” For information about this, visit www.airconsumer.ost.dot.gov/hotline.htm.

If an individual believes that he or she has been subjected to treatment by an airline that violates the

requirements of the ACAA or the rule and would like DOT to investigate the complaint, that person may submit a complaint to the Department's Aviation Consumer Protection Division at the following address:

Aviation Consumer Protection Division
Attn: C-75-D
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

- The complaint may be included in a letter, or may be filed on the disability complaint form that appears elsewhere on the Web site. Such complaints should be signed by or for the complainant. Complaints may also be sent by e-mail to airconsumer@ost.dot.gov. The complainant should provide:
- His or her full name, address, telephone number, e-mail address, if any, and the name of the party who suffered the alleged discriminatory conduct, if other than the person submitting the complaint;
- The name of the air carrier involved in the incident, as well as the date of the incident, the place where it occurred and the flight number(s) involved;
- A detailed description of the incident that you believe constituted discriminatory action, including names of those involved (or a description of the individuals) and names of any witnesses; and
- Any other information you believe might be helpful in supporting your complaint. Please send copies (not originals) of any pertinent documents you have relating to the incident (e.g., ticket, boarding passes, itinerary sheets and correspondence to and from the carrier involved).

Our rules also provide detailed procedures for filing and serving formal third party enforcement complaints against airlines. See 14 CFR Part 302, particularly Subparts A and D. Such complaints are generally filed by attorneys or public interest groups on behalf of individuals, but they also may be filed by the individuals affected by discrimination themselves. Because of recent changes in the ACAA, each disability-related complaint received by the Department, whether submitted pursuant to 14 CFR Part 302 or under the procedures outlined here, will receive a similar investigation.

Once we have received your complaint, we will investigate it and determine what compliance or enforcement action, if any, may be warranted. We will acknowledge your complaint and advise you of its disposition when we complete our review. We may also be in contact with you to request further information that may be needed to complete the review. You should be aware that due to the time necessary for the carrier to conduct its own review of your complaint and get back to you and us, coupled with our need to then review your case and the hundreds of others we receive each year, our response to you will likely take some time.

Those filing complaints should be aware that the remedies that the Department may pursue in these cases are limited by statute. In addition to ensuring prompt corrective action when a complaint and carrier response indicate that the airline's policies and procedures are not in compliance with the ACAA, the Department generally will pursue further enforcement action on the basis of a number of complaints from which it may infer a pattern or practice of discrimination. However, resources permitting, enforcement action may also be brought based on one or a few complaints that are supported by adequate evidence indicating particularly egregious conduct on the part of a carrier. Complainants should also realize that the Department's authority does not allow it to award monetary damages or pecuniary relief to the injured

party, and is limited to the issuance of cease and desist orders proscribing unlawful conduct by a carrier in the future and the assessment of civil penalties payable to the government. The Department may take such actions only through settlements or after formal hearings before Administrative Law Judges. Particularly egregious records of repeated violations may warrant the revocation of a carrier's economic authority to operate. To obtain a personal monetary award of damages, a complainant would have to institute a private legal action.

The rights of disabled air travelers are also protected under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), particularly with respect to discrimination in airport facilities. The Aviation Consumer Protection Division does not have the authority to investigate claims of violations of those statutory provisions. If it receives such claims it will forward them to the appropriate federal enforcement agency (i.e., the Federal Aviation Administration or the Department of Justice).

It is important that complaints be filed as soon as possible after the incident at issue to facilitate the Department's investigation; however, we do urge that complainants first seek redress informally in writing from the carrier involved since this may expedite corrective action or a resolution acceptable to the complainant (see, 14 CFR 382.65).

Voting Accessibility for the Elderly and Handicapped Act

The Voting Accessibility for the Elderly and Handicapped Act of 1984 generally requires polling places across the United States to be physically accessible to people with disabilities for federal elections. Where no accessible location is available to serve as a polling place, a political subdivision must provide an alternate means of casting a ballot on the day of the election.

This law also requires states to make available registration and voting aids for disabled and elderly voters, including information by telecommunications devices for the deaf (TDDs) which are also known as teletypewriters (TTYs).

For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Voting Section - 1800 G
Washington, D.C. 20530
(800) 253-3931 (Voice/TTY)

National Voter Registration Act

The National Voter Registration Act of 1993, also known as the “Motor Voter Act,” makes it easier for all Americans to exercise their fundamental right to vote.

One of the basic purposes of the Act is to increase the historically low registration rates of minorities and people with disabilities that have resulted from discrimination. The Motor Voter Act requires all offices of state-funded programs that are primarily engaged in providing services to persons with disabilities to provide all program applicants with voter registration forms, to assist them in completing the forms, and to transmit completed forms to the appropriate state official.

For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Voting Section - 1800 G
Washington, D.C. 20530
(800) 253-3931 (Voice/TTY)
www.usdoj.gov/crt/voting

Help America Vote Act (HAVA)

The Help America Vote Act (HAVA) is legislation aimed at improving the general election process and sets forth new federal election requirements for state election officials to follow. Some of the new guidelines include:

- Each state must develop a centralized, computerized, and uniform statewide voter registration database to ensure the accuracy of voter registration files.
- Each voting precinct is required to have one voting machine that is accessible for people with disabilities.
- Each state must provide provisional ballots to ensure that every voter is able to cast his or her vote if there is a question of eligibility. There must also be a system developed to notify the voter if his or her ballot was or was not counted, and if not, why not.
- Each state must develop a system that allows voters to check for errors on their ballots and make any corrections privately and independently.
- Each polling place must be accessible to people with disabilities.

For more information on HAVA, please visit the Federal Election Commission's Web site:
www.fec.gov/hava/hava.htm

For information on Indiana's plan for the implementation of HAVA, please visit the Indiana's Secretary of State's Election Division Web site: www.sos.in.gov/elections/hava

If you feel your rights have been violated or if you have been witness to any form of voter fraud, please contact any of the following local, state or federal offices:

Indiana Secretary of State Election Division

Toll free grievance line: 866-IN1-Vote or 866-461-8683

Grievance form available online at www.sos.in.gov

HAVA staff will be on hand to answer calls from 6 a.m. to 7 p.m. EDT on Election Day and from 8 a.m. to 4:30 p.m. on regular business days.

Indiana Protection & Advocacy Services (IPAS)

Voters with Disabilities needing assistance regarding accessibility issues may also contact IPAS at:
4701 N. Keystone Ave., Suite 222

Indianapolis, IN 46205

Voice: (317) 722-5555 or (800) 622-4845 TTY: (317) 722-5563 or (800) 838-1131

Indiana Election Division

Direct: (317) 232-3939 Toll free: (800) 622-4941

Indiana State Police – Criminal Investigation Division
(317) 232-4338

Federal Department of Justice

Civil Rights Division (202) 307-2767 or (800) 253-3931

Public Integrity Section, Election Crimes Branch (202) 514-1421



ELECTION FRAUD AND ACCESSIBILITY GRIEVANCE FORM

Indiana Secretary of State HAVA Division

Indiana Government Center south
302 West Washington Street, Room E-111
Indianapolis, Indiana 46204
Telephone: (866) 461-6683

PROCEDURE

Please complete this form below. After the form has been notarized, please submit it to the HAVA office at the address listed above. The form will be reviewed by the Election Division to determine if a violation may have occurred. If a violation may have occurred, then the complaint will be investigated.

PERSON FILING FORM

Name		
Address (street and number, city, state, ZIP code)		County of residence
Email address (optional)	Day Telephone	Evening Telephone

NATURE OF THE GRIEVANCE

Please describe the nature of the complaint (Attach additional Grievance sheets if necessary)

Have you filed this complaint with your county election board?

☐ Yes ☐ No

NOTARY CERTIFICATE

STATE OF	SS	
COUNTY OF		
I, _____ swear or affirm that the information set forth above is true to the best of my knowledge and belief		
Signature		Signature of Notary Public
Print or typed name		Print or typed name of Notary Public
Date subscribed and sworn to Notary Public	County of Residence	Date commission expires

Voters with disabilities needing assistance regarding accessibility issues may also contact the Indiana Protection and Advocacy Services at:
4701 N. Keystone Ave. #222, Indianapolis, IN 46205
(Toll Free) 800.622.4845 (TTY) 800.838.1131

Civil Rights of Institutionalized Persons Act

The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the U.S. Attorney General to investigate conditions of confinement at state and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes and institutions for people with psychiatric or developmental disabilities.

Its purpose is to allow the Attorney General to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions. The Attorney General does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized people.

The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are “egregious or flagrant,” that they are subjecting residents to “grievous harm,” and that they are part of a “pattern or practice” of resistance to residents’ full enjoyment of constitutional or federal rights, including Title II of the ADA and Section 504 of the Rehabilitation Act.

For more information or to bring a matter to the Department of Justice’s attention, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Special Litigation Section - PHB
Washington, D.C. 20530
(877) 218-5228 (Voice/TTY)
www.usdoj.gov/crt/split

Rehabilitation Act

The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.

Section 501 requires affirmative action and nondiscrimination in employment by federal agencies of the executive branch. To obtain more information or to file a complaint, employees should contact their agency's Equal Employment Opportunity Office.

Section 503 requires affirmative action and prohibits employment discrimination by Federal government contractors and subcontractors with contracts of more than \$10,000.

For more information on Section 503, contact:

Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room C-3325
Washington, D.C. 20210
(202) 693-0106 (Voice/relay)
www.dol.gov/esa/ofccp

Complaints must be filed within 300 days.

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives federal financial assistance or is conducted by any executive agency or the United States Postal Service.

Each federal agency has its own set of Section 504 regulations that apply to its own programs. Agencies that provide federal financial assistance also have Section 504 regulations covering entities that receive federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations. Each agency is responsible for enforcing its own regulations.

Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a federal agency or to receive a "right-to-sue" letter before going to court.

For information on how to file 504 complaints in Indiana, contact:

Office of Civil Rights
U.S. Dept. of Health and Human Services
233 N. Michigan Ave., Ste. 240
Chicago, IL 60601
(312) 886-2359 (Voice)
(312) 353-5693 (TDD)
(312) 886-1807 (Fax)
For more information: www.hhs.gov/ocr

Section 508 establishes requirements for electronic and information technology developed, maintained, procured, or used by the federal government. Section 508 requires federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

An accessible information technology system is one that can be operated in a variety of ways and does not rely on a single sense or ability of the user. For example, a system that provides output only in visual format may not be accessible to people with visual impairments and a system that provides output only in audio format may not be accessible to people who are deaf or hard of hearing. Some individuals with disabilities may need accessibility-related software or peripheral devices in order to use systems that comply with Section 508.

For more information on Section 508, contact:

U.S. General Services Administration
Center for IT Accommodation (CITA)
1800 F Street, N.W.
Room 1234, MC:MKC
Washington, DC 20405-0001
www.section508.gov
(202) 501-4906 (Voice)
(202) 501-2010 (TTY)

U.S. Architectural and Transportation Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, DC 20004-1111
(800) 872-2253 (Voice)
(800) 993-2822 (TTY)
www.access-board.gov

Architectural Barriers Act

The Architectural Barriers Act (ABA) requires that buildings and facilities that are designed, constructed, or altered with federal funds, or leased by a federal agency, comply with federal standards for physical accessibility. ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those buildings and facilities. Facilities of the U.S. Postal Service are covered by the ABA.

For more information or to file a complaint, contact:

U.S. Architectural and Transportation Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, D.C. 20004-1111
(800) 872-2253 (Voice)
(800) 993-2822 (TTY)
www.access-board.gov/enforce.htm

Complaints can be filed online, by e-mail, mail or fax.

Indiana Civil Rights Law

The Indiana Civil Rights Law states that it is the public policy of the state of Indiana to provide equal opportunity to all of its citizens and that it is unlawful to discriminate in the areas of:

- Employment
- Real Estate
- Education
- Public Accommodation
- Credit

On the basis of:

- Race
- Religion
- Color
- Sex
- Disability
- National Origin
- Ancestry
- Familial Status (Housing)

Indiana Civil Rights Complaint Process

I - Filing a Complaint

WHO: Any person claiming to be aggrieved by a discriminatory practice or act contrary to the provisions of the Indiana civil rights law may file a complaint with the Indiana Civil Rights Commission (ICRC).

WHEN: A complaint must be filed within one hundred eighty (180) days from the date of occurrence of the discriminatory act (except in housing cases).

A complaint alleging a discriminatory housing practice must be filed within one (1) year after the discriminatory act has occurred.

HOW: Complaints may be filed by either personal delivery, mail, or fax. If needed, the ICRC staff will provide assistance in drafting and filing the complaint. The complaint must be in a writing and signed under penalties of perjury.

Online filing of complaint - You can file a complaint through the internet.
Visit www.in.gov/icrc/pubs/onlinecomplaint.html.

WHERE: The Indiana Civil Rights Commission, Indiana Government Center North, 100 North Senate Ave., Room N103, Indianapolis, IN 46204-2211.

Office: (317) 232-2600 Toll Free: (800) 628-2909 Hearing Impaired: (800) 743-3333
Fax: (317) 232-6580 Web Site: www.IN.gov/icrc/ E-Mail: icrc@crc.in.gov

II - Investigation

The ICRC investigator's job is to collect and summarize the evidence. The investigator must collect the BEST evidence available for each side. Thus, you may be asked to supply documents that support your position. The Investigator will seek information to compare the treatment given the Complainant to treatment given other similarly situated individuals or groups. There may be an attempt to discuss the issues and settle the case. Your lawyer is welcome to participate in the investigation, but a lawyer is not required.

The ICRC investigator may also request that a test be performed during the investigation. Testing is a controlled method to determine differential treatment in the quality and content of information and/or services given in order to discover discriminatory practices.

Testers are trained individuals whose function is to observe what occurs and record their experiences relating to the complaint. It is the policy of ICRC to recruit tester trainees from a wide variety of backgrounds, races and national origins.

NOTE: You may have other rights or causes of action that do not fall under the jurisdiction of the ICRC. If you feel you do, you should contact an attorney.

III – Mediation Settlement

At any time during an investigation, the ICRC Alternative Dispute Resolution (ADR) Team can attempt to resolve the dispute through mediation, if all parties agree. Mediation seeks a voluntary resolution of the dispute by the parties without deciding the merits of the case. If the parties are unable to reach an agreement, the complaint will proceed through investigation and public hearing, if necessary.

IV – Director's Determination

If no settlement has been reached, the facts and recommendations are presented to the executive director who reviews the material and makes a determination whether there is probable cause to believe that an illegal act of discrimination occurred. The Complainant has fifteen (15) days to ask for reconsideration of a no probable cause finding.

V – Conciliation Settlement

If probable cause is found, a formal attempt to resolve the case will be made. If settlement is achieved, a written Consent Agreement will be issued for signatures by all parties. The agreement is then submitted to the Commission for consideration. When approved, a Consent Agreement has the same effect as a Final Order.

VI – Public Hearing

If settlement fails, the case is tried at a public hearing. An ICRC staff attorney may present the Complainant's claim. The burden of proof is on the Complainant. An Administrative Law Judge (ALJ) presides at the public hearing. Proposed findings are issued by the ALJ and submitted to the ICRC. Either party has fifteen (15) days to file objections to the recommended findings. An oral argument on objections may be held before the full Commission.

VII – Final Order

A Final Order by the Commission is binding. Either party may seek judicial review.

VIII - Remedies

If the Commission finds discrimination, a final order may include a cease and desist order and require further affirmative action that will eliminate discrimination. This might include reinstatement to a job,

monetary relief where evidence showed that there was some resulting loss, making a house or apartment available and/or validating selection devices. Reasonable attorneys' fees and costs may be awarded to the prevailing party in housing cases.

Complainant's Rights and Responsibilities

You have a right:

- To know the status of your case and who is working on it
- To have written notice of any hearing or final action relating to your case
- To have an attorney of your choosing present at any stage of the process
- To file and pursue a charge without being harassed, intimidated or retaliated against
- To obtain a full remedy, if discrimination is found
- To appeal any final decision

You have a responsibility:

- To supply and explain all relevant information, data, or papers upon request
- To respond to all telephone or mail inquiries from the ICRC. Your case may be dismissed if you don't. Inquiries will be as convenient and as infrequent as possible
- To attend all meetings, hearings or fact-finding conferences when requested. Your schedule will be accommodated, if possible
- To follow your case by keeping in touch, providing all new addresses or telephone changes, and inquiring about undue delays

Respondent's Rights and Responsibilities

You have a right:

- To have a clear written statement of the charge
- To know the status of the case and who is working on it
- To have written notice of any hearing or final action
- To appeal any final decision
- To have an attorney present at any stage of the process, if you so desire

You have a responsibility:

- To provide a written answer to the complaint within the time required after receiving it
- To supply and explain all relevant information, data, or papers upon request
- To respond to all telephone or mail inquiries from the ICRC. These will be as convenient and as infrequent as possible
- To attend all meetings, hearings or fact-finding conferences when requested. Your schedule will be accommodated, if possible.

Special Education

Special education describes an educational alternative that focuses on teaching students with academic, behavioral, health or physical needs beyond those met by traditional educational programs or techniques. If your child has a developmental, physical, learning or emotional disability, the Individuals with Disabilities Education Improvement Act entitles him/her to a free and appropriate public education (FAPE).

The Individuals with Disabilities Education Improvement Act of 2004

The Individuals with Disabilities Education Improvement Act (IDEIA) is the nation's special education law. First enacted three decades ago, IDEIA provides billions of dollars in federal funding to help states and local communities provide special education opportunities for approximately six million students with varying degrees of disability. For more information on IDEIA, visit www.idea.ed.gov.

In exchange for federal funding, IDEIA requires states to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE) appropriate to their individual needs. IDEIA requires public school systems to develop appropriate Individualized Education Programs (IEP's) for each child. The specific special education and related services outlined in each IEP reflect the individualized needs of each student.

IDEIA also mandates that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable people and must be at least reviewed annually. The team includes the child's teacher; the parents, subject to certain limited exceptions; the child, if determined appropriate; an agency representative who is qualified to provide or supervise the provision of special education; and other individuals at the parents' or agency's discretion.

If parents disagree with the proposed IEP, they can request a due process hearing and a review from the state educational agency if applicable in that state. They also can appeal the state agency's decision to state or federal court.

For more information, contact:

Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100
(202) 245-7468 (Voice/TTY)
<http://idea.ed.gov>

The statute outlines a detailed due process procedure to ensure that all students receive FAPE.

Indiana Special Education Due Process:

Article 7 refers to 511 IAC 7-17 through 7-31 that contain Indiana's special education regulations.

Disagreements concerning the special education needs of a student, the implementation of the IEP, or other disputes regarding special education may arise between parents and schools. When such disagreements arise, the regulations provide several avenues of dispute resolution.

As the parent of a child who has or may have a disability, you have certain rights (also called procedural safeguards) under federal and state laws. These are listed in the ***Notice of Procedural Safeguards and Parent Rights in Special Education***. The notice of your rights must be given to you in your native language or in a means of communication you can understand.

If you would like a more detailed explanation of these rights or a copy, you should contact:

- The principal at your child's school
- A school administrator,
- The special education director, or
- The Indiana Department of Education
Division of Exceptional Learners
Room 229, State House
Indianapolis, IN 46204-2798
(317) 232-0570 or (877) 851-4106 (toll free)
ideanet.doe.state.in.us/exceptional/speced/pub_ProcedSafeguard.html

Resource Agencies and Organizations

If you need help in understanding the Notice of Procedural Safeguards and Parent Rights in Special Education or you have any questions about them, you may contact any of the following resource agencies:

Indiana Protection and Advocacy

4701 North Keystone Avenue, Suite 222
Indianapolis, IN 46205
(317) 722-5555 (Phone)
(317) 722-5564 (Fax)
Toll-free: (800) 622-4845 (Voice)
Toll-free: (800) 838-1131 (TTY)
www.IN.gov/ipas

Indiana Department of Education

Division of Exceptional Learners
Room 229, State House
Indianapolis, IN 46204
(317) 232-0570 (Phone)
(317) 232-0589 (Fax)
Toll-free: (877) 851-4106 (Voice)

About Special Kids (ASK)

Formerly Indiana Parent Information Network (IPIN)
4755 Kingsway Drive, Suite 105A
Indianapolis, IN 46205

(317) 257-8683 (Phone)
(317) 251-7488 (Fax)
Toll-free: (800) 964-4746 (Voice)
Toll-free: (800) 838-1131 (TTY)

IN*SOURCE (Indiana Resource Center for Families with Special Needs)

809 North Michigan
South Bend, IN 46601-1036
(574) 234-7101 (Phone)
(574) 234-7279 (Fax)
Toll-free (800) 332-4433 (Voice)

Action at the Local Level

When problems arise regarding a student's special education, informal action at the local level is often most successful in appropriately resolving the problem. Many times the problem is easily resolved through informal meetings or discussions involving the parents, teachers, administrators or therapists. If the problem requires a change in the IEP, the case conference committee will be reconvened to make appropriate changes. If informal discussions or subsequent case conference committee meetings are unable to resolve the dispute, the parents or school may utilize more formal means of dispute resolution. Both you and the school share in your child's education. If there are issues or concerns about your child's education, you and your child's teacher should discuss them.

Complaints

You may file a complaint if you believe the school is not complying with the requirements of federal or state special education laws or regulations or when the school is not complying with orders issued by an independent hearing officer or the Board of Special Education Appeals. The Division of Exceptional Learners (Division) will conduct an investigation of the allegations of non-compliance.

1. Who may file a complaint?

Any individual, group of individuals, agency, or organization may file a complaint with the Indiana Department of Education, Division of Exceptional Learners, alleging the school's failure to comply with the requirements of Article 7 or the IDEIA. You or others may also file a complaint if the school is not complying with orders issued by an independent hearing officer or the Board of Special Education Appeals as the result of a due process hearing.

2. What must be included in the complaint?

To file a complaint and request an investigation, you need to send a signed, written request with the following information to the Division:

- Your name, address, and telephone number
- The child's name
- The name of the school corporation and the school the child attends
- A statement of the violations of federal or state special education laws or regulations that you believe have occurred
- A description of the facts that support your allegation(s)

Where to send the request

Department of Education
Division of Exceptional Learners
Room 229, State House
Indianapolis, IN 46204-2798
(317) 232-0570 (Phone)
(317) 232-0589 (Fax)

The complaint must also state that the alleged violation occurred not more than one year prior to the date of the complaint. If you file a complaint and request compensatory services, the violation must have occurred within three years of the date of your complaint. However, a complaint involving a continuing or systemic violation may be filed at any time.

3. What happens after I file a complaint?

The Division assigns a complaint investigator who will contact you and the school to obtain information needed to make an independent determination as to whether a violation has occurred. You will have the opportunity to submit additional information to the investigator, either orally or in writing, regarding the complaint issues. The school also has the opportunity to submit information in response to the complaint. The investigator will decide if an on-site investigation is necessary.

The investigator will review all of the relevant information and make an independent determination of whether or not the school has complied with the regulations. A report containing the investigator's findings of fact, conclusions, and the reasons for the decision will be provided to you and the school.

If the investigator concludes that the school has not complied with requirements of the state or federal special education regulations, the report will include corrective action that the school must take to correct the violation. The investigator will monitor the school's compliance with the corrective action, and provide technical assistance activities and negotiations as appropriate. Corrective action may include how to remediate the denial of services, monetary reimbursement, other action appropriate to the needs of your child, and future provision of services for all students with disabilities.

4. How long does the investigation take?

The complaint investigation report, including findings of fact, conclusions, and reasons for the decision, will be mailed to you and the school within 30 calendar days after the complaint was received by the Division. The Division Director may allow the investigator additional time to complete the report if there are exceptional circumstances that require additional time. You will be notified in writing if additional time is granted for the complaint investigation report.

5. What if I disagree with the complaint investigator's report?

If you disagree with the complaint investigation report, you may request reconsideration by writing to the Division Director within 15 calendar days of your receipt of the report. Your written request for reconsideration must state the specific portions of the report that you want reconsidered, with specific facts to support your request for a change in the report. The school also has the right to ask for reconsideration, following the same procedure. If you request reconsideration, the response from the Division Director is due within 60 calendar days after the original complaint was received by the Division. However, if additional time was granted for the complaint investigation report, the deadline is also extended by the same number of days. The Division Director will mail the response to the request for reconsideration to you and the school.

Also,

- If a complaint contains issues that are also the subject of a due process hearing, the Division will ask the hearing officer to decide if he or she will include those issues as part of the due process hearing, or if the Division should pursue an investigation.
- If the complaint contains issues that are not being addressed through the due process hearing, complaint procedures will be followed.
- If you file a complaint containing an issue that was previously decided through a due process hearing, the Division will inform you that the decision of the hearing officer or the Board of Special Education Appeals is binding.

Mediation

Sometimes, you may disagree with the school about your child's special education. Mediation is a process that may help you and the school resolve the disagreement about your child's disability identification or eligibility, evaluation, the level of services or placement, the provision of FAPE, or payment for services that you have obtained.

1. What is mediation?

Mediation is a way to discuss and resolve disagreements between you and the school with the help of an impartial third person who has been trained in effective mediation techniques. Mediation is a voluntary process, and both you and the school must agree to participate in order for the mediation session to occur. The mediation sessions are scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.

A mediator does not make decisions; he or she facilitates discussions and decision making. The discussions in a mediation session are confidential and may not be used as evidence in subsequent due process hearings or civil court proceedings. If the mediation process results in full or partial agreement, the mediator will prepare a written mediation agreement that must be signed by both you and the school's representative. In addition to describing the things you've agreed to, the mediation agreement will state that all discussions that occurred during the mediation are confidential and may not be used as evidence in a due process hearing or other civil court proceeding. The signed agreement is legally binding on both you and the school and is enforceable in court.

2. When is mediation available?

Mediation is available to resolve a disagreement between you and the school regarding the identification, evaluation, placement, services, or the provision of a FAPE to your child. You may request mediation before, at the same time, or after requesting a due process hearing. Requesting mediation will not prevent or delay a due process hearing, nor will mediation deny any of your other rights. You or the school may suggest mediation, and it begins when both agree to participate. Participating in mediation is voluntary for both you and the school. Your right to a due process hearing is not delayed or denied by requesting or declining to participate in mediation.

3. How do I request mediation?

In order to initiate the process, you and the school must both sign a Request for Mediation form that is then sent to Division. A Request for Mediation form may be obtained from the school or from the Division. The Division will assign a mediator who will contact both you and the school to schedule a timely meeting in a convenient location.

4. How is a mediator chosen and do I have to pay for the mediator?

The Division maintains a list of mediators who are trained, qualified and knowledgeable about the laws and regulations relating to the provision of special education and related services. A mediator is assigned based on a regional rotation basis.

No employee of Department of Education (including the Division), a local school corporation, or other public agency providing special education services is eligible to be a mediator. Mediators must not have any personal or professional conflict of interest. Mediators are not considered to be employees solely because they are paid to provide this service. The Division bears the cost of the mediation process.

The school may establish procedures to offer you the opportunity to meet at a convenient time and location to have someone from a parent training center or alternative dispute resolution entity to discuss the benefits of the mediation process when you have opted not to participate in mediation with the school. However, the Division must approve any procedures established by the school before they can be implemented, and the procedures cannot be used to delay or deny your right to a due process hearing if you decline to participate in such a meeting. The Division pays for the cost of these meetings.

Due Process Hearings, Appeals, Court Actions and Attorney Fees

A due process hearing is a formal proceeding in which evidence is presented to an independent hearing officer to resolve a dispute between you and the school regarding your child's disability identification, evaluation, eligibility, placement, services, or reimbursement of services you have obtained privately.

A request for a due process hearing must be made within two years of the date you knew or should have known about the alleged action forming the basis of your dispute with the school. This two-year limit does not apply if you were prevented from requesting the hearing due to specific misrepresentations made by the school that it had resolved the problem you complained about or if the school withheld pertinent information from you.

Only a parent, the school, or the Department of Education may request a due process hearing regarding a student with a disability. Upon your request, the school must provide you with information on free or low-cost legal and other relevant services in your area.

1. How do I request a due process hearing?

To request a due process hearing, you need to send a signed, written request with the identified information to the addresses below:

- Your name, address, and telephone number
- Your child's name and address (if different)
- The name of the school corporation and the school the child attends
- A statement of the reason for the hearing requests including a description of the problem and a statement of the facts relating to the problem, and
- A proposal for resolution of the problem, to the extent known to you

A model form to assist you with your request is available from the Division. You will not be able to have a due process hearing unless your written request for a hearing contains all of the information listed above.

Where to send the request:

Indiana Department of Education
Division of Exceptional Learners
Room 229, State House
Indianapolis, IN 46204-2798
(317) 232-0570 (Phone)
(317) 232-0589 (Fax)

Dr. Suellen K. Reed,
Superintendent of Public Instruction
Room 229, State House
Indianapolis, IN 46204-2798
(317) 232-8004 (Fax)

Or – The Superintendent of the school corporation or public agency that serves your child.

2. What happens after I send a request for a due process hearing?

Once a request for hearing is received, an independent hearing officer is appointed, and he or she is provided with a copy of your hearing request. Otherwise your request remains confidential. The Division will send you and the school a letter notifying you of the hearing officer's appointment. In addition, the school must abide by certain requirements within specific time periods after it receives your request for a due process hearing (see item #3 below for more details). The school must also inform you of the availability of mediation and of any free or low-cost legal and other relevant services in the area.

3. What actions must the school take once it receives my request for a due process hearing?

A. Within 10 days of receiving your request for a due process hearing, the school must do two things:

1. Send you written notice regarding the subject matter of your request for a due process hearing including:
 - a. An explanation of why the school proposed or refused to take the action that is the subject of the due process hearing;
 - b. A description of the options the case conference committee considered, and the reasons they were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the school used as the basis for its decision; and
 - d. A description of the factors the school believes are relevant to its proposal or refusal.

NOTE: The school is not required to send you this written notice after it receives your request for a due process hearing IF the school previously sent you prior written notice on the same matter.

2. Send you a written response that specifically addresses the issues you raise in your request for a due process hearing.

B. If the school believes your letter requesting a due process hearing does not contain all of the required information listed above, it may send a letter to you and the hearing officer indicating that your request

does not comply with the requirements. If the school is going to send this letter, it must do so within 15 days of receiving your request for a due process hearing.

The hearing officer then has five days to determine if your request is sufficient and will immediately inform both you and the school in writing of the decision. If the hearing officer agrees with the school, you must resubmit the request for a due process hearing that meets all of the requirements. If the school does not challenge the contents of your request for a due process hearing, it is considered to meet all of the requirements.

C. Within 15 days of receiving your request for a due process hearing, the school must provide you with the opportunity for a resolution meeting to see if the matter can be resolved. See item #4 for more information on the resolution meeting.

4. What is a resolution meeting, who attends, and what happens?

Prior to the opportunity for a due process hearing, the school must convene a meeting called a “resolution session.” The meeting must include a representative from the school with decision-making authority and relevant members of the case conference committee (CCC) who have information about the facts alleged in the hearing request. Unless you bring your attorney to this meeting, the school may not have an attorney at the meeting. In this meeting you will discuss the facts that formed the basis of your request and give the school an opportunity to resolve the issues raised in your request. You can agree with the school to use an alternative means to hold the resolution meeting (e.g., via video conference or conference telephone call).

5. Do I have to attend the resolution session?

You do not have to attend a resolution session if you and the school agree in writing to waive it, or if you both agree to use the mediation process.

6. What if the school and I come to an agreement and resolve the issues that are the subject of my hearing request during the resolution session?

If you and the school come to an agreement during this meeting, you will both sign a legally binding written agreement that will be enforceable in a court of appropriate jurisdiction. After it is signed, both you and the school have three business days to change your minds, and either of you may void the agreement during that time.

7. What if we waive the resolution session or if we don’t reach agreement?

If you and the school agree in writing to waive the resolution meeting or if you cannot resolve the issues in mediation or a resolution meeting within 30 days of the school receiving your request for a hearing, the due process hearing may occur. The 45-day timeline for the due process hearing begins at this point.

8. Can I change or add issues to my request for a hearing after it has been determined to meet all of the requirements?

Once your request for a due process hearing has been determined to meet all of the requirements, you cannot change or add issues to the request unless one of the following occurs:

- The school agrees in writing that you can add or change issues and has the opportunity to conduct a resolution meeting on the new or changed issues,

OR

- The hearing officer gives you permission to make changes (but this cannot occur within the last five days prior to the due process hearing).

If you are permitted to make changes or add issues to your request for a hearing, it may be treated as the first request for a due process hearing, and all of the timelines and events described in item #3 above could begin again.

9. When and where will the due process hearing take place?

Before the hearing occurs, the independent hearing officer will contact you and the school to make arrangements for a prehearing conference. One of the things you will decide at the prehearing conference is when the hearing will occur. The hearing will be held at a time and place reasonably convenient to you and the school. The independent hearing officer will send you written notice about the time and the place of the hearing, as well as other procedural matters.

10. Who conducts the due process hearing?

An independent hearing officer conducts the due process hearing. The Division maintains a list of individuals who serve as independent hearing officers, along with a list of each individual's qualifications. Individuals who serve as independent hearing officers cannot be employees of the state Department of Education or the school corporation that is involved in the student's care or education, and they cannot have any professional or personal interest that would conflict with his or her objectivity in conducting the hearing.

In addition, the hearing officer must possess knowledge of the federal statute and regulations governing special education services, as well as "legal interpretations" made by federal and state courts; possess the knowledge and ability to conduct hearings in accordance with standard legal practice; and be able to render and write decisions in accordance with standard legal practice. An individual who otherwise qualifies to conduct a hearing is not an employee of the school or agency solely because he or she is paid by the school or agency to serve as the independent hearing officer.

11. Can I raise new or additional issues during the due process hearing?

You will not be able raise issues at the hearing that you did not include in your hearing request, unless the school agrees otherwise.

12. What are my rights and the school's rights during a due process hearing?

You and the school have the right to:

- Be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of students with disabilities
- Present evidence, confront, cross-examine, and compel the attendance of any witnesses
- Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days prior to the hearing
- Separate the witnesses so that they do not hear other witnesses' testimony
- Be provided with an interpreter

As a parent, you also have the right to:

- Decide whether your child (who is the subject of the hearing) will attend the hearing

- Have the hearing opened or closed to the public
- Obtain a written or an electronic (on diskette) verbatim transcript of the proceedings, as well as a written or electronic copy of the independent hearing officer's written decision, including findings of fact, conclusions, and orders without cost to you

Before the hearing, you are entitled to a copy of your child's educational record, including all tests and reports upon which the school's proposed action is based. In addition, at least five business days before the date of the hearing, you and the school must disclose to each other the evaluations each intends to use in the hearing. Specifically, copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If either you or the school fails to make these disclosures on time, the hearing officer may bar the evidence from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the independent hearing officer.

13. How does the hearing officer make the decision?

The decision of the hearing officer is made on substantive grounds based on a determination whether the school provided your child with a free appropriate public education (FAPE). If your request for a hearing includes or is based on alleged procedural violations, the hearing officer may find that your child did not receive a FAPE only if he or she finds that the procedural violations occurred AND that they: (1) impeded your child's right to a FAPE, (2) significantly impeded your opportunity to participate in the decision making process regarding the provision of FAPE, or (3) deprived your child of educational benefits. As part of his or her decision and order, the hearing officer may order the school to comply with the procedural requirements.

14. When will I get a copy of the independent hearing officer's written decision?

The independent hearing officer must conduct the hearing and mail you and the school a written decision within 45 calendar days from either: (1) the date that you and the school agreed in writing to waive the resolution meeting, or (2) the 30th day following the Department of Education's receipt of your request for a hearing if you and the school did not resolve the issues in mediation or a resolution meeting during the 30 day period. However, it may be longer than 45 days if the independent hearing officer grants a request for an extension of time from you or the school. The independent hearing officer's decision is final and the orders must be implemented UNLESS you or the school appeal the decision by requesting review by the Board of Special Education Appeals (see questions 15 and 16 below).

15. Who pays for the due process hearing?

The school (or in some cases, the Division) is responsible for payment of the hearing officer's fees and the court reporter's charges. You are responsible for your costs of participating in the due process hearing (e.g., witness fees, your attorney's fees, costs of copying documents, etc.) Under certain circumstances, the school may be required to reimburse you for your attorney's fees.

16. What if I disagree with the independent hearing officer's written decision?

If you disagree with the independent hearing officer's written decision, you may request a review of the decision by the Board of Special Education Appeals. A request for review must be submitted within 30 calendar days of the date you receive the written decision. Your signed, written request for review should include the following information:

- Your name, address and telephone number

- The file number assigned to the hearing
- A description of the errors you believe the hearing officer made, either in the conduct of the hearing or in the findings of fact, conclusions of law, or orders, including why you believe parts of the written decision are incorrect and the information you have in support of your position

Where to send the request

Superintendent of Public Instruction
 Attention: Legal Section
 Room 229, State House
 Indianapolis, IN 46204-2798
 (317) 232-6676 (Phone)
 (317) 232-0744 (Fax)

Opposing party's (school corporation of public agency) address

17. What happens when the Board of Special Education Appeals reviews the independent hearing officer's decision?

The Board will review the entire record of the hearing to ensure the procedures of the hearing were consistent with the requirements of special education due process procedures. The Board may ask you and the school to make an oral presentation.

The Board may also decide to conduct a hearing to gather additional information. If the Board asks for oral argument or wants to conduct a hearing, it must be at a time and place reasonably convenient to you, your child and the school. Both you and the school have the same rights as in the due process hearing.

The Board will make an independent decision at the completion of its review. The Board's written decision will contain findings of fact, conclusions of law, and, if necessary, orders. The written decision will be mailed to you and the school. You have the option of receiving the Board's decision in an electronic (on diskette), rather than written format, either of which is free of charge.

18. How long does it take the Board of Special Education Appeals to conduct a review?

The Board must mail you and the school its written decision within 30 calendar days from the date the petition for review was first received by the Department of Education. However, a longer period of time is allowed if the Board has granted either party's request for an extension of time.

19. What if I disagree with the Board of Special Education Appeals' decision?

The Board's decision is final unless you or the school disagree with the decision and file a civil action in a state or a federal district court. An appeal to court must be filed within 30 calendar days of the date you received the decision of the Board. The records of the administrative proceedings are to be forwarded to the court for review.

The court may hear additional evidence upon either party's request, make a decision based on a preponderance of the evidence, and order the relief it determines appropriate. The court's decision may be appealed to a court with appellate jurisdiction. Federal district courts of the United States have jurisdiction of actions brought under the IDEA without regard to the amount in controversy.

You may be entitled to file a lawsuit under other state or federal laws. However, if you are seeking a remedy that is also available under the IDEA or Article 7, you must first go through a due process hearing and administrative appeal.

20. Where is my child placed during a due process hearing, appeal, or court proceeding?

Except when your child has violated a school rule or has done something that could have hurt himself or someone else, during any due process or court proceedings your child stays in the current educational placement, unless you and the school agree to another placement. If the hearing involves an application for initial admission to school, your child, with your consent, must be placed in public school until the proceedings are finished.

21. If I have an attorney during the due process hearing, appeal, or court proceeding, can I be reimbursed by the school for my attorney fees?

If an attorney represents you during a due process hearing (including an appeal and subsequent civil action), the court may award you reasonable attorney's fees if you ultimately prevail. You may also be eligible for an award of attorney fees if you are the prevailing party and were substantially justified in rejecting the school's settlement offer.

The school may negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed. If agreement is not reached through these negotiations, you may file an action in state or federal court for resolution of the disagreement.

However, the school or the Division may seek attorney's fees against your attorney if your attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable or without foundation or if your attorney continued to litigate after the litigation was obviously frivolous, unreasonable or without foundation.

The school or the Division may also seek attorney's fees from you or your attorney if the hearing request was presented for any improper purpose, such as to harass, to unnecessarily delay, or to needlessly increase cost of litigation.

Mediation is not available to resolve a disagreement on attorney's fees. An action for attorney fees must be filed in a state or federal court within 30 calendar days after a final decision that is not appealed. Any fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under the IDEIA and Article 7.

The court may not award attorneys' fees for:

- Services performed after the school made a timely written settlement offer to you, and the relief you finally obtained is not more favorable to you than the school's settlement offer (unless you were justified in rejecting that settlement offer) and the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins and the offer is not accepted within 10 days
- Any meeting of the case conference committee, unless the meeting was convened as result of an administrative proceeding or judicial action
- A mediation session that was conducted prior to the time the due process hearing request was filed
- The resolution session

The court may reduce an award for attorneys' fees if:

- You or your attorney unreasonably protracted the final resolution of the controversy

- The fees unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience, without a bonus or multiplier used in calculating the fee
- The time spent and legal services furnished were excessive, considering the nature of the action or proceeding
- Your attorney or you did not provide the school with appropriate information in the due process hearing request

The court may not reduce reimbursement for attorney fees if the court finds that the school (or in some cases, the Department of Education) unreasonably protracted the final resolution of the action or proceeding or there was a violation of 20 USC § 1415. The school may use its federal special education funds to pay for the costs of a due process hearing, but it cannot use those funds to pay a parent's attorney fees or its attorney fees.

Expedited due process hearings and appeals

An expedited due process hearing means that the due process hearing is conducted and the decision rendered within 10 business days from the date the request for a hearing is received by the Department of Education. An expedited due process hearing is only available in three situations:

- When you disagree with the school's determination that the student's behavior is not a manifestation of the student's disability, IEP, or placement
- When you disagree with the actual placement proposed as the interim alternative educational setting
- When the school believes that returning the student to his or her current placement (the placement prior to suspension, expulsion, or placement in an interim alternative educational setting) is substantially likely to result in injury to the student or to others

A request for an expedited due process hearing is made in the same manner as a request for all other due process hearings (see question #1 in DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS, AND ATTORNEY FEES above).

Each of the parties to an expedited due process hearing has the rights afforded to them under the IDEA and 511 IAC Article 7 except that the parties have the right to prohibit the presentation of any evidence at the expedited due process hearing that was not disclosed at least two business days before the hearing (compared to five business days in all other due process hearings).

The independent hearing officer must meet the same qualifications as for an independent hearing officer in all other due process hearings.

1. What is different about an expedited due process hearing and appeal?

- The independent hearing officer must conduct the hearing and mail the decision in the matter to the parties within 10 business days of the date the Department received the request, regardless of whether the request is from you or the school.
- The independent hearing officer may not grant any extensions of time.
- Each party has the right to appeal the independent hearing officer's written decision, and the

appeal procedures are the same, except the time period in which to appeal the decision is three business days from the date of receiving the independent hearing officer's decision rather than the 30 calendar days in all other due process hearings.

- When a request for review is made, the Board of Special Education Appeals:
 - ♦ Cannot grant any extensions of time
 - ♦ Cannot hear oral argument
 - ♦ May nominate a single member of the Board to review the hearing record and issue a decision without the participation of the other two Board members
 - ♦ Must issue a written decision within 10 business days of the date of the Board's receipt of the request for review

2. How does the independent hearing officer review a decision with respect to the manifestation determination?

The independent hearing officer applies the same standards as the case conference committee in determining whether the information collected and utilized by the case conference committee supports the school's position that the student's behavior resulting in disciplinary action is not a manifestation of his or her disability, IEP, or placement.

3. What things must the independent hearing officer consider when he or she makes a decision regarding an interim alternative educational setting?

- Whether the school has demonstrated by substantial evidence that maintaining the student in his or her current placement is substantially likely to result in injury to the student or to others
- The appropriateness of the student's current placement
- Whether the school has made a reasonable effort to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services
- Whether the interim alternative educational setting proposed by the school will enable the student to:
 - ♦ Progress in the general curriculum, although in another setting
 - ♦ Receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP
 - ♦ Include services and modifications to address and prevent the recurrence of the behavior resulting in the recommendation for an interim alternative educational setting

4. Can the independent hearing officer change my child's placement to an interim alternative educational setting if he or she poses a risk of harm to self or others?

Yes. If the school demonstrates by substantial evidence that there is a danger that your child or other students are likely to be injured if your child stays in his or her current placement, the school may request an expedited hearing to obtain an order from a hearing officer to change your child's educational placement to an interim alternative educational placement for up to **45 calendar days**.

Student's placement and status during due process proceedings (hearing, appeal, judicial review)



INSTRUCTIONS: Complete this form and mail or fax it to the Division of Exceptional Learners.

STUDENT INFORMATION

Name of Student:		Age	Date of Birth (M/D/Y)	Grade
Address of Student:	City:	Zip code:		
Name of Parent/Guardian:	Address of Parent/Guardian (if different from students):	Home Telephone number () Daytime Telephone number ()		
Name/Address of Attorney Representing Student and Parent/Guardian: (If this section is completed, all information and correspondence regarding due process will be forwarded to the attorney.)		Telephone number ()		

SCHOOL INFORMATION

Name of School Student attends:	Name/Address of School Corporation:
Name/Address of School Corporation Attorney:	

DISPUTE ISSUES

The dispute involves:
<input type="checkbox"/> The student's identification and eligibility for services under Article 7
<input type="checkbox"/> The appropriateness of the educational evaluation
<input type="checkbox"/> The appropriateness of the student's proposed or current level of special education services or placement
<input type="checkbox"/> The provision of a free appropriate public education for the student
<input type="checkbox"/> Reimbursement for services obtained by the parent
Please include the facts relevant to the dispute. Attach additional pages as necessary.
Briefly explain the resolution you are seeking:

EXPEDITED DISPUTE ISSUES

An expedited hearing will only be conducted in the following situations:
<input type="checkbox"/> The parent disagrees with a determination regarding the manifestation of a student's disability.
<input type="checkbox"/> The parent disagrees with the public agency's decision regarding the student's disciplinary change of placement under 511 IAC 7-29-3.
<input type="checkbox"/> The public agency is requesting a hearing because it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student's placement in an interim alternative educational setting.
Briefly explain the resolution you are seeking:

Printed name _____

Signature _____

Date _____

NOTE: Requests received without signature will not be processed.

copy – IDOE/DEL

copy – Superintendent of Public Instruction

copy – Superintendent/Public Agency

SEND TO:

INDIANA DEPARTMENT OF EDUCATION
DIVISION OF EXCEPTIONAL LEARNERS
ROOM 229 STATE HOUSE,
INDIANAPOLIS, IN 46204-2798
FAX: (317) 232-0589

REQUEST FOR MEDIATION

STUDENT'S
NAME _____ D/O/B _____

PLANNING DISTRICT _____ SCHOOL CORP _____

We request that a mediator be assigned to assist in resolving disagreements regarding:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Has a due process hearing been requested in addition to Mediation? (Circle) YES OR NO
Date of hearing request _____

Your initial will signify your agreement with the following statements:

We understand that mediation is voluntary. We both agree to participate in mediation.

_____ School Representative _____ Parent/Guardian

Should we reach a written and signed agreement through mediation the agreement will be legally binding and enforceable in any court of competent jurisdiction.

_____ School Representative _____ Parent/Guardian

My signature indicates that I agree that discussions during the mediation process are confidential and may not be used in any subsequent due process hearing or court case.

Signature of School Corporation Representative

Signature of Parent/Guardian

Printed Name and Title of Representative

Printed Name of Parent/Guardian

Street Address

Street Address

City State Zip Code

City State Zip Code

Telephone

Telephone

Generally, during any of these proceedings, the student remains in his or her current placement, unless you and the school agree to a different placement. However, these are the exceptions to this general rule:

- If the proceeding involves the student's initial admission to school, the student will be placed in school until the proceedings are completed, as long as you consent to such placement.
- If the proceeding involves a disagreement about the student's interim alternative educational setting, the student remains in the interim alternative educational setting chosen by the school for up to 45 calendar days, pending the independent hearing officer's decision, unless you and the school agree on a different placement.

If the independent hearing officer or the Board of Special Education Appeals agrees with you that a change of placement is appropriate, the placement is considered an agreed upon placement between you and the school or the Department.

Supplemental Security Income

The Social Security Administration (SSA) pays disability benefits under two programs.

The **Social Security disability insurance program** pays benefits to you and certain family members if you worked long enough and paid Social Security taxes. Your adult child also may qualify for benefits on your earnings record if he or she has a disability that started before age 22.

The **Supplemental Security Income (SSI)** program pays benefits to disabled adults and children who have limited income and resources. SSI benefits also are payable to people 65 and older without disabilities who meet the financial limits.

Ticket to Work is a voluntary program that offers SSA disability beneficiaries greater choice in obtaining the support and services they need to help them go to work and achieve their employment goals. If individuals receive Social Security Disability Insurance or Supplemental Security Income benefits based on disability or blindness and would like to work or increase current earnings, this program can help people get vocational rehabilitation, training, job referrals, and other ongoing support and services to do so.

The appeal process is the same as the CAP process under VR if VR is the employment network. Each employment network had to develop their own appeal process for clients to utilize.

The Appeals Process

You must be sure that every decision made about your Social Security or Supplemental Security Income (SSI) claim is correct. Social Security will carefully consider all the information in your case before making any decisions that affect your eligibility or your benefit amount.

When Social Security makes a decision on your claim, they will send you a letter explaining the decision. If you do not agree with the decision, you can appeal and ask Social Security to look at your case again.

When you ask for an appeal, Social Security will look at the entire decision, even those parts that were in your favor. If the decision was wrong, they will change it.

When and how can you appeal?

If you wish to appeal, you must make your request in writing within 60 days from the date you receive the letter from Social Security. It is assumed that you receive the letter five days after the date on the letter, unless you can prove that you received it later. Call your local Social Security office if you need help with your appeal.

How many appeal levels are there?

Generally, there are four levels of appeal. They are:

- Reconsideration
- Hearing by an Administrative Law Judge
- Review by the Appeals Council
- Federal Court review

When Social Security sends you a letter about a decision on your claim, they will tell you how to appeal the decision.

Reconsideration

A reconsideration is a complete review of your claim by someone who did not take part in the first decision. Social Security will look at all the evidence submitted when the original decision was made, plus any new evidence.

Most reconsiderations involve a review of your files without the need for you to be present. But when you appeal a decision that you are no longer eligible for disability benefits because your medical condition has improved, you can meet with a Social Security representative and explain why you believe you still have a disability.

Hearing

If you disagree with the reconsideration decision, you may ask for a hearing. The hearing will be conducted by an Administrative Law Judge (ALJ) who had no part in the first decision or the reconsideration of your case.

The hearing is usually held within 75 miles of your home. The ALJ will notify you of the time and place of the hearing.

You and your representative, if you have one, may come to the hearing and explain your case in person. You may look at the information in your file and give new information.

The ALJ will question you and any witnesses you bring to the hearing. Other witnesses, such as medical or vocational experts, may give Social Security information at the hearing. You or your representative also may question the witnesses.

It is usually to your advantage to attend the hearing. If you do not wish to do so, you must tell Social Security in writing that you do not want to attend. In certain situations, Social Security may hold your hearing by a video conference rather than in person. They will let you know ahead of time if this is the case. With video hearings, they can make the hearing more convenient for you. Often an appearance by video hearing can be scheduled faster than an in-person appearance. Also, a video hearing location may be closer to your home. That might make it easier for you to have witnesses or other people accompany you.

Unless the ALJ believes your presence is needed to decide the case, he or she will make a decision based on all the information in your case, including any new information given.

After the hearing, Social Security will send you a letter and a copy of the ALJ's decision.

Appeals Council

If you disagree with the hearing decision, you may ask for a review by Social Security's Appeals Council. Social Security will be glad to help you ask for this review.

The Appeals Council looks at all requests for review, but it may deny a request if it believes the hearing decision was correct. If the Appeals Council decides to review your case, it will either decide your case itself or return it to an administrative law judge for further review.

If the Appeals Council denies your request for review, Social Security will send you a letter explaining the denial. If the Appeals Council reviews your case and makes a decision itself, they will send you a copy of the decision. If the Appeals Council returns your case to an ALJ, Social Security will send you a letter and a copy of the order.

Federal court

If you disagree with the Appeals Council's decision or if the Appeals Council decides not to review your case, you may file a lawsuit in a federal district court. The letter Social Security sends you about the Appeals Council's action also will tell you how to ask a court to look at your case.

Will my benefits continue?

In some cases, you may ask Social Security to continue paying your benefits while they make a decision on your appeal. You can ask for your benefits to continue when:

- You are appealing their decision that you can no longer get Social Security disability benefits because your medical condition is not disabling
- You are appealing their decision that you are no longer eligible for SSI payments or that your SSI payment should be reduced or suspended

If you want your benefits to continue, you must inform Social Security within 10 days of the date you receive the letter. If your appeal is turned down, you may have to pay back any money you were not eligible to receive.

Can someone help me?

Yes. Many people handle their own Social Security appeals with free help from Social Security. But you can choose a lawyer, a friend or someone else to help you. Someone you appoint to help you is called your "representative." Social Security will work with your representative just as they would work with you. Your representative can act for you in most Social Security matters and will receive a copy of any decisions made about your claim.

Your representative cannot charge or collect a fee from you without first getting written approval from Social Security. If you want more information about having a representative, contact Social Security for the publication, *Your Right To Representation* (Publication No. 05-10075) or you can find it on their Web site, www.socialsecurity.gov.

Contacting Social Security

For more information and to find copies of Social Security publications:

(800) 772-1213 (Voice)

(800)325-0778 (TTY)

www.socialsecurity.gov

Social Security can answer specific questions from 7 a.m. to 7 p.m., Monday through Friday. They can provide information by automated phone service 24 hours a day. All calls are treated confidentially.

Medicaid

Medicaid is the state-federal health care program for low-income children and families, senior citizens and people with severe disabilities. This medical assistance program makes reimbursements for reasonable and necessary medical care to people meeting eligibility requirements. The program is state administered by the Office of Medicaid Policy and Procedure (OMPP), a part of the Family and Social Services Administration.

Medicaid was created to provide health care to the following groups of low income individuals:

- Families with Children
- Pregnant Women and Children
- Aged
- Blind and Disabled

To be eligible for Medicaid, a person must belong to one of those groups and meet the financial criteria for that group.

Blind and Disabled

To be eligible for Medicaid in Indiana, a disabled person must have a physical or mental impairment, a disease or loss that appears reasonably certain to last for a continuous period of 12 months that substantially impairs his/her ability to perform labor or services or to engage in a useful occupation. Blind and disabled recipients may also be eligible for the Medicare-related programs described above if they are eligible for Medicare.

Medicaid Appeals Process

If you believe there is an excessive delay in the processing of your application for assistance, or an incorrect decision affecting your benefits has been made by the local Office of Family and Children, you have the right to file an appeal.

Your right to appeal is guaranteed under state and federal regulations for all public assistance programs, including Medicaid. You will have 30 days, plus three days for mailing to file an appeal. The official notice about your benefits has important information about your appeal rights and how to request an appeal; be sure to read it carefully.

What happens to my benefits?

If you are receiving benefits and the official notice says that your benefits are going to stop or be reduced, you can ask for “continued benefits” when you file and appeal sooner than the time limits explained above.

The local Office of Family and Children will not take the proposed action if you file an appeal within these time frames. However, if the hearing decision is not in your favor, you may be required to repay some or all of the benefits you received while waiting for the decision.

What actions can be appealed?

You can appeal if a decision is not made on your application within certain time limits. The time limit is 90 days for Medicaid determinations under the Disability category.

- If you are receiving benefits, appealable actions include, but are not limited to the following:
- The effective date of Medicaid coverage
- The amount of your Medicaid spend-down or patient liability to be paid to a health care facility
- A delay by the local Office of Family and Children in making an adjustment in the amount of your benefits
- The denial of or reduction in medical services to be paid for by Medicaid
- A decision that benefits have been paid in error and must be repaid

What happens after you file an appeal?

When the appeal request is received, the Family and Social Services Administration (FSSA) will schedule a fair hearing and you will be notified in writing of the date, time and place of the hearing. The hearing will generally be held in the local Office of Family and Children in the county where you live.

You may represent yourself at this hearing, or you may authorize someone else to represent you such as a lawyer, friend, relative or any other person. If you choose to represent yourself you may find it helpful to write down your reasons for appealing so that you will remember to cover all of the points you wish to raise.

What happens at the fair hearing?

An Administrative Law Judge will open the hearing and then give each party time to present his or her case. You or your representative will have the opportunity to:

- Review any and all material in the case record
- Review all documents and records being used by the local Office of Family and Children at the hearing
- Bring witnesses
- Establish all pertinent facts and circumstances
- Present any argument without undue interference
- Question or refute any testimony or evidence given by the local Office of Family and Children or any other adverse witness
- Introduce any evidence that would support your case

The local Office of Family and Children will be give the opportunity to present the facts behind the action that was proposed or taken and to present the applicable federal and state laws and regulations that support the action.

How soon will I know the hearing decision?

The FSSA will notify you in writing of the decision on your case within 90 days of the date your appeal request was received. The decision will describe the relevant facts and explain what the rules are and how they apply to your case. The local Office of Family and Children will also receive a copy of the decision and must comply with it. Any necessary adjustments to your benefits will be made.

Contact your local Office of Family and Children for additional information concerning Hearings and Appeals:

Hearings and Appeals (MS04)
402 W. Washington St., Rm. E034
Indianapolis, IN 46204
(317) 232-4412 (Fax)

Medicaid Waiver Services Program

The Medicaid Waiver program began in 1981, in response to the national trend toward providing Home and Community-Based Services (HCBS). In the past, Medicaid paid only for institutionally based long term care services, such as nursing facilities and group homes. This new program “waived” the requirement of an admission into an institution in order for Medicaid to pay for the Home and Community-Based Services (HCBS).

Unlike regular Medicaid, Waiver services are not entitlement programs.

Indiana applied for permission to offer Medicaid Waivers from the Centers' for Medicare and Medicaid Services (CMS). The Medicaid Waivers make use of federal Medicaid funds (plus state matching funds) for Home and Community-Based Services (HCBS), as an alternative to institutional care, under the condition that the overall cost of supporting people in the home or community is no more than the institutional cost for those people.

The Office of Medicaid Policy and Planning (OMPP) is responsible for the development and operation of the Waivers, in agreement with the Division of Aging and the Division of Disability and Rehabilitative Services. Each Division works to create the service definitions and standards for services and providers and then certifies provider applicants in order to provide the Waiver services.

Bureau of Developmental Disabilities Services (BDDS)

BDDS is part of the Division of Disability, Aging, and Rehabilitation Services, a division of the Indiana Family and Social Services Administration.

As a state agency, BDDS coordinates services for individuals with developmental disabilities in order for them to become as capable and self-sufficient as possible. At the local level, the BDDS Service Coordinator is the placement authority and works with individuals with developmental disabilities and their families to plan and access community residential services. BDDS funds residential services to provide for the individual as long as their services are needed.

The goals of Waiver services are to provide to the person meaningful and necessary services and supports, to respect the person's personal beliefs and customs, and to ensure that services are cost-effective. Specifically,

Waivers for children and adults whose needs are primarily medical in nature assist a person to:

- Be as independent as possible
- Live in the least restrictive environment possible while maintaining the safety in the home

Waivers for children and adults with a developmental disability assist a person to:

- •Become involved in the community where he/she lives and works
- •Develop social relationships in the person's home and work communities
- •Develop skills to make decisions about how and where the person wants to live
- •Be as independent as possible

Who is Eligible for Medicaid Waiver Services?

A resident of Indiana must meet a combination of state and federal requirements in order to be eligible for a Medicaid Waiver. Specifically, a person must meet categorical eligibility (aged, blind, or disabled), financial, and non-financial eligibility requirements. When a person becomes 'targeted' for the Waiver, some of the Medicaid eligibility requirements are removed, such as the family income is not considered as part of the financial consideration for children under age 18.

Just because the person has been denied Medicaid eligibility in the past does not mean that the person should not re-apply when there are Waiver services available.

How Are Problems Resolved?

If you are having a problem with your service provider staff or case manager, talk first with the service provider staff or the case manager. You should expect a quick and appropriate response to your concern or problem. If the issue is not resolved, speak to the supervisor of staff or case manager. After a reasonable number of days, and if you are still concerned about the problems, you can contact the following:

For Nursing Home Level of Care Waivers:

If the problem remains unresolved, or if the problem is with your Area Agency on Aging (AAA), contact the Division of Aging at 317-232-7132 or 800-545-7763, ext. 2-7132 to report the problem.

For ICF/MR Level of Care Waivers:

The first step to resolve a complaint is to work with the case manager and the local BDDS office. If the parties have not tried to resolve with the local resources, they will be referred back to the case manager and BDDS to try that means of resolution.

- If the problem with a provider or case manager remains unresolved, contact the Bureau of Quality Improvement Services (BQIS) at 317-234-2736, or 800-545-7763, ext. 4-2736.
- BQIS complaint process: when reporting a complaint, the caller should provide as much of the following information as possible:
 - ◆ Name, address and phone number of the person receiving services
 - ◆ Medicaid or social security number of the person receiving services
 - ◆ Name, address and phone number of the contact person
 - ◆ Name of the individual's case manager
 - ◆ Brief description of the complaint

- ♦ Explanation of steps that have been taken by the Case Manager and/or BDDS local office to resolve problem/issue. BQIS will thoroughly investigate the complaint. When the investigation and resolution is complete, the person who made the complaint will be notified of the outcome of the investigation by BQIS.
- If the problem is with the local Bureau of Developmental Disabilities Services (BDDS) District Office, contact the Director of Client Services at 317-234-3719 or 800-545-7763, ext. 4-3719.
- Another resource: contact the DD Waiver Ombudsman at 800-622-4484. By law, the Ombudsman receives, investigates and attempts to resolve complaints and concerns that are made by or on behalf of people with developmental disabilities in Waiver programs.

Other resources for assistance in complaint resolution include:

- **Adult Protective Services (APS)** 800-992-6978 conducts investigations and provides least restrictive intervention for adults who are endangered by abuse, neglect or exploitation.
- **Child Protective Services (CPS)** 800-800-5556 conducts investigations and protects children from abuse or neglect and prevents, remedies or assists in solving problems that may result in abuse, neglect, exploitation or delinquency of a child.
- **Indiana Protection and Advocacy Services (P&A)** 800-622-4845 will investigate consumer complaints, assist in the appeals' process, if needed, or take other action needed to resolve problems.
- **Medicaid Fraud Hot Line** 800-382-1039 will investigate reports and allegations or providers or people inappropriately using Medicaid benefits or funding.

Choosing a new provider

Freedom of choice is guaranteed under the Waiver program. Exercising your freedom of choice is the best way to make sure you receive the services that you need. You have the right to CHOOSE to change to a different provider or case manager (as long as the different provider is certified by the Medicaid program for your area). The process is designed to be flexible to meet changing needs and/or provide better delivery of services.

Provider discontinuing services

A Waiver provider can discontinue Waiver services for a variety of reasons. A provider of Nursing Facility Level of Care Waiver services that decides to stop delivering a service must give a thirty 30 day written notice to you, the case manager, and the Division of Aging Provider Relations Specialist. If proper notice is not given, contact your case manager. The case manager will also assist you in selecting another provider.

A provider of ICF/MR Level of Care Waiver services that decides to stop delivering a service must give a sixty (60) day written notice to you, the case manager, the District Office Service Coordinator, and the State Provider Relations Specialist. If proper notice is not given, contact your case manager. The case manager will also assist you in selecting another provider. The provider is expected to continue to deliver the Waiver services until another provider is selected and begins the services.

What Are Your Appeal Rights?

An appeals' process is available to every person who thinks that an action taken is adverse to him/her. For example, a person is denied initial eligibility for a Waiver, or your Level of Care eligibility is denied during the annual review process or a specific Waiver service, such as an assistive technology device, has

been denied. Denial of non-Waiver Medicaid services--referred to as “state plan” or “regular Medicaid” services--may also be appealed.

When the State denies your eligibility for a program or service, you will receive a written Notice of Action. The effective date of the action will be in the Notice of Action you receive. The Notice of Action will include the appeals’ procedure, describing what should be sent with the written appeal request, to whom the appeal request should be sent, and the timelines. Most appeal requests must be filed within 30 days. During the appeal process, benefits and services will continue, until there is a hearing decision. If you are in doubt, always request an appeal. The appeals’ process is the only way to preserve your rights under federal and Indiana administrative law.

The State will schedule a hearing before an Administrative Law Judge and must send a written notice of the hearing at least ten days before the scheduled date. You, as the person who has filed an appeal, have a right to:

- Be represented at the hearing by legal counsel, advocate, friend, and/or relative,
- Review the entire case file prior to the hearing; to bring witnesses and cross-examine adverse witnesses, and
- Present evidence.

Hearings are usually conducted in a Division of Family Resource office in your county of residence.

The decision of the Administrative Law Judge may be further appealed by requesting an “Agency Review.” This consists of a review of the record from the hearing and the Administration Law Judge’s decision by a Family and Social Services Administration designee, in order to determine if the decision is appropriate. No new evidence is accepted for the review; however, you or your representative may submit a “Memorandum of Law” summarizing the case. To appeal the Agency Review decision, you must file for judicial review in a civil court.

For further information regarding your appeal rights, contact your case manager. You may also contact one of the advocacy agencies for more information or support on appeals or services.

Additional Waiver Resources

There are several sources of information about Indiana’s Medicaid Waiver program that may be useful for people with disabilities and families:

The Waiver Provider Manual for Home and Community-Based Services is a primary reference document for Home and Community-Based Services (HCBS) Medicaid Waiver providers. The manual provides instruction to case managers, other service providers, state staff, family members, advocates, and Waiver participants and is available to assist all those who administer, manage, and participate in Indiana’s HCBS Waiver programs. This manual was issued by the Office of Medicaid Policy and Planning on February 13, 2007 and will be updated on a quarterly basis. It is the authorized reference document for Indiana Medicaid HCBS Waiver service providers and the administration of those programs. The manual is posted to the Indiana Medicaid web page at www.indianamedicaid.com, click on manuals.

A printed copy can be ordered from BDDSHelp@fssa.in.gov.

Additional information about the Department of Aging and the Aged & Disabled and Traumatic Brain Injury Waivers is available on the Internet:

- New Initiatives Options and Services: www.in.gov/fssa/elderly/options/
- Waiver Information: www.in.gov/fssa/elderly/aging/programs-services.html

Additional information about the Division of Disability and Rehabilitation Services and the Autism, DD and Support Services Waivers is available on the Internet:

- Available Services: www.in.gov/fssa/disability/avail_services.html
- Forms and Information Needed to Apply: www.in.gov/fssa/disability/services/medicaidneed.html
- Providers Page: www.in.gov/fssa/disability/providers.html
- www.in.gov/gpcpd/publications/2007/ConsumerWaiverGuideW200703.doc

Vocational Rehabilitation Services (VR)

Vocational Rehabilitation Services' (VR) mission is to assist people with disabilities to achieve greater independence through employment. It is a state-federal partnership program established in 1920 to provide return to work opportunities for disabled World War I veterans.

It has since evolved into an employment program that serves any eligible Hoosiers with a disability who want to find or return to work. As an economic development program that returns income and tax dollars to Indiana's economy, VR reduces dependency on public assistance.

VR works in collaboration with a variety of public and private agencies to enhance employment opportunities for Hoosiers with disabilities and serves amputees, people with mental illness, the developmentally disabled, people with orthopedic, neurological, vision and hearing impairments and many other disabilities.

VR Appeal Process

- 1) Client, defined as an applicant or eligible individual or individual eligible for VR, or representative of the applicant or eligible individual, must request a mediation or appeal.
- 2) Vocational Rehabilitation Counselor (VRC) must provide the client with the required Request for Mediation and Appeal form and inform the applicant or eligible individual or representative of the applicant or eligible individual that the request for medication or appeal must be made in writing within 15 days of notification of the disputed decision or action. VRC must also inform client of the availability of an informal supervisory review, mediation, and administrative hearing as well as an overview of the process of selecting a mediator or impartial hearing officer. VRC must inform the client of his or her of the availability of under the Client Assistance Program (CAP).
- 3) Upon receipt of written request for mediation or appeal from client, the Vocational Rehabilitation Area Supervisor (VRAS) determines whether or not the request was made within the required 15 day timeframe.
- 4) If the request was submitted within the required timeframe, the VRAS, will offer to meet with the client. This informal supervisory meeting is voluntary and, if agreed to, must occur within five days of receipt of the form. If the client does not agree to meet with the VRAS the paperwork must be sent to the VR Director immediately. If an informal advisory meeting is agreed to and occurs, the completed paperwork must be forwarded to the VR Director within one day. Scheduling and completion of informal supervisory meeting should in no way cause a delay the VRAS in completing the Request for Mediation and Appeal form and forwarding this completed request to the VR central office for further processing.
- 5) Upon receipt of the completed Request for Mediation and Appeal form the VR Director or his designee has three days to randomly assign a mediator, if mediation was requested, and randomly assign an impartial hearing officer.
- 6) Upon notification of their selection, the mediator and impartial hearing officer will schedule an impartial due process and if applicable, each will communicate the date, time, location, and preparatory instructions in writing to the client or client's representative, the VRC, the VR Director, and any other involved parties.

- 7) The impartial due process hearing must be completed as soon as possible but not more than 60 calendar days following the date on which the completed Request for Mediation and Appeal form was received by the VR Director or his designee.
- 8) Any client who is dissatisfied with the decision rendered by an impartial hearing officer may request an impartial administrative review of the decision by submitting a written request for review with the Secretary of the Indiana Family and Social Services Administration (FSSA). This request must be made in accordance with the instructions provided by the impartial hearing officer and must be postmarked within 20 calendar days of the mailing of the impartial hearing officer's decision.
- 9) The Secretary of FSSA must make an independent, final decision and provide a report of the decision in writing, including a full reports of the findings and the statutory, regulatory or policy grounds for the decision, to the parties within 30 calendar days of the submission date of the request for the administrative review.
- 10) Any client who is dissatisfied with the findings and decisions rendered by the impartial hearing officer and the Secretary of FSSA may bring about a civil action with respect to the matter in dispute.

Statute Citations

Air Carrier Access Act of 1986
49 U.S.C. § 41705

Implementing Regulation:
14 CFR Part 382

Americans with Disabilities Act of 1990
42 U.S.C. §§ 12101 et seq.

Implementing Regulations:
29 CFR Parts 1630, 1602 (Title I, EEOC)
28 CFR Part 35 (Title II, Department of Justice)
49 CFR Parts 27, 37, 38 (Title II, III, Department of Transportation)
28 CFR Part 36 (Title III, Department of Justice)
47 CFR §§ 64.601 et seq. (Title IV, FCC)

Architectural Barriers Act of 1968
42 U.S.C. §§ 4151 et seq.

Implementing Regulation:
41 CFR Subpart 101-19.6

Civil Rights of Institutionalized Persons Act
42 U.S.C. §§ 1997 et seq.

Fair Housing Amendments Act of 1988
42 U.S.C. §§ 3601 et seq.

Implementing Regulation:
24 CFR Parts 100 et seq.

Individuals with Disabilities Education Act
20 U.S.C. §§ 1400 et seq.

Implementing Regulation:
34 CFR Part 300

National Voter Registration Act of 1993
42 U.S.C. §§ 1973gg et seq.

Section 501 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 791

Implementing Regulation:
29 CFR § 1614.203

Section 503 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 793

Implementing Regulation:
41 CFR Part 60-741

Section 504 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 794

Over 20 Implementing Regulations for federally assisted programs, including:
34 CFR Part 104 (Department of Education)
45 CFR Part 84 (Department of Health and Human Services)
28 CFR §§ 42.501 et seq.

Over 95 Implementing Regulations for federally conducted programs, including:
28 CFR Part 39 (Department of Justice)

Section 508 of the Rehabilitation Act of 1973, as amended
29 U.S.C. § 794d

Telecommunications Act of 1996
47 U.S.C. §§ 255, 251(a)(2)

Voting Accessibility for the Elderly and Handicapped Act of 1984
42 U.S.C. §§ 1973ee et seq.



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